No. 80-737

Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

CITIZENS AGAINST RENT CONTROL/COALITION FOR FAIR HOUSING, an unincorporated association; MASON-McDUFFIE, a California corporation; BERKELEY BOARD OF REALTORS, a California nonprofit association; BETTY GERITZ; MURIEL ROSENKRANZ and EVA FLOYSTRUP,

Appellants,

vs.

CITY OF BERKELEY, CALIFORNIA, a municipal corporation; THE BERKELEY CITY COUNCIL; THE BERKELEY FAIR CAMPAIGN PRACTICES COMMISSION; PATRICIA DEVITO, BETTY BENNETT, MERLIN EDWARDS, JOHN CHASEN, THOMAS DONOVAN, FAITH OTIS, SANDY MILLER, DAVID B. ROSENTHAL, as members of the Berkeley Fair Campaign Practices Commission,

Appellees.

On Appeal from the Supreme Court of the State of California

APPENDIX TO JURISDICTIONAL STATEMENT

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Appendix A

In The Supreme Court of the State of California

S.F. 24124
Super. Ct. No. 493837-0

Citizens Against Rent Control et al.,
Plaintiffs and Respondents,

vs.

City of Berkeley et al.,
Defendants and Appellants.

[Filed Aug. 7, 1980]

OPINION

May a municipality constitutionally place a limit on the size of contributions to committees formed to support or oppose ballot measures? We conclude that while the challenged legislation must be examined with great care, such a limit is constitutional because it serves compelling governmental interests without unduly infringing upon First Amendment rights. Although resolution of a conflict between fundamental interests such as these is never easy, in this instance the balance favors allowing government regulation.

At the April 1977 Berkeley municipal election the electorate was asked to vote on a proposed initiative charter amendment to create a rent control board empowered

SEE DISSENTING OPINION

to fix the rates for most rental units in the city. The measure was controversial, and opponents formed an unincorporated association known as Citizens Against Rent Control (CARC).

Berkeley's Election Reform Act of 1974 (Ord. No. 4700-N.S.) regulates its municipal elections. The city attorney and the Berkeley Fair Campaign Practices Commission informed CARC that section 602 of the act, prescribing a $250 maximum on contributions in support of or in opposition to a ballot measure, would be enforced in the forthcoming election.[1] CARC admittedly accepted several contributions in excess of the $250 limit, totalling some $18,600. On March 30, 1977, the Fair Campaign Practices Commission ordered CARC to pay that amount to the city's general fund as required by section 604 of the act.[2] CARC

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[1]Section 602 is authorized by Elections Code section 22808 and provides: "No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to a measure to exceed two hundred and fifty dollars ($250)."

"Person" is given a broad definition in section 219 to include all types of business entities as well as individuals.

"Contribution" is broadly defined in section 206 to include all types of monetary donations or loans that are directly or indirectly in aid of or in opposition to a ballot measure.

Section 600, limiting candidate contributions to $250, is not here in issue.

[2]Section 604 provides: "If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City Auditor for deposit in the General Fund of the City."

responded by filing a complaint for injunctive and declaratory relief against the city and the commission (hereinafter Berkeley), contending that section 602 was in violation of its First Amendment rights and those of other named plaintiffs who desired to make contributions larger than $250.[3] The superior court granted a preliminary injunction against enforcement of sections 602 and 604.

After the election, CARC amended its complaint to allege it had accumulated a campaign debt of approximately $8,000 and it sought to solicit large contributions to satisfy this debt. CARC then moved for summary judgment on the ground that section 602 was invalid on its face. The court granted the motion and rendered a judgment declaring that section 602 violated the First Amendment to the United States Constitution and article I, section 2, of the California Constitution. Berkeley appeals.

I

Our past decisions, and those of the United States Supreme Court, establish a framework for determining whether section 602 prevents effective political advocacy or impermissibly interferes with associational rights. The seminal ruling is Buckley v. Valeo (1976) 424 U.S. 1, which considered the constitutionality of the Federal Election Campaign Act of 1971 (Pub.L.No. 92-225, 86 Stat. 3) and the Federal Election Campaign Act Amendments of 1974 (Pub.L.No. 93-443, 88 Stat. 1263). *Buckley* upheld against First Amendment attack the act's limitation of $1,000 on

[3]The other plaintiffs were a real estate broker, the Berkeley Board of Realtors, and three individuals who alleged they were contributors to CARC and owners of real property in Berkeley.

contributions to candidates for federal office, but invalidated restrictions on *expenditures* by or on behalf of candidates. The court held that the contribution and expenditures of money for political expression were the equivalent of pure speech, and hence that statutory limits thereon must be judged by the strict scrutiny reserved for infringement of First Amendment rights. (*Id.* at pp. 15-19, 58-59.) We adhered to *Buckley* in Citizens for Jobs & Energy v. Fair Political Practices Com. (1976) 16 Cal.3d 671 (invalidating expenditure limitations on campaigns to pass ballot propositions), and in Hardie v. Eu (1976) 18 Cal.3d 371 (invalidating expenditure limitations on campaigns to qualify ballot propositions). We observed in *Hardie* (at p. 378), "On the other hand, as the high court noted in *Buckley,* appropriate limitations on individual *contributions* remain a constitutionally valid means of dealing with undue influence by moneyed interests in the electoral process. (*Buckley, supra,* at pp. 23-28 . . . .)"

While this case was on appeal, the Supreme Court spoke to a related issue in First National Bank of Boston v. Bellotti (1978) 435 U.S. 765, overturning a Massachusetts statute insofar as it prohibited corporations from making *any* expenditure or contribution, directly or indirectly, to influence the vote on ballot measures. The court held that the statute infringed upon First Amendment rights (*id.* at pp. 785-786), and looked to whether it served a compelling state interest by the least restrictive means (*id.* at p. 786). The court recognized the importance of the state's asserted justification of "Preserving the integrity of the electoral process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a

democracy for the wise conduct of government'" (*id.* at pp. 788-789), but declined to find the Massachusetts statute served such an interest in the absence of a showing by record evidence or legislative findings that "the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts, or that there has been any threat to the confidence of the citizenry in government." (Fn. omitted; *id.* at pp. 789-790.) The court rejected the view that the possible influence of corporate advertising on the outcome of the vote justified the complete prohibition of such advertising. (*Id.* at pp. 790-792; see generally Comment, *The Constitutionality of Limitations on Corporate Contributions to Ballot Measure Campaigns* (1978) 13 U.S.F. L.Rev. 145 (hereinafter U.S.F. Comment).)

II

Berkeley's first contention is that CARC and the other plaintiffs have failed to show infringement of their First Amendment rights so as to require it to demonstrate that section 602 serves a compelling governmental interest by the least restrictive means. CARC responds that certain affidavits before the trial court furnished adequate evidence both that its ability to engage in effective political advocacy was impaired and the associational rights of its contributors were significantly diminished. Regardless of the weight of that evidence, however, the controlling federal decisions appear to hold that monetary restrictions on election campaigns will be deemed to require strict scrutiny. Thus in *Buckley* the court differentiated contribution from expenditure limitations, stating that the for-

mer resulted in "only a marginal restriction" and "little direct restrain" on political communication. (424 U.S. at pp. 20-21.) However, despite the finding of marginal effect the court invoked strict scrutiny in considering the constitutionality of the contribution limitations. (*Id.* at pp. 23-38.) We likewise give the challenged ordinance stringent review.

III

The ordinance at issue here affects one of the prominent attributes of the 20th-century California political landscape: the popular initiative and referendum. We reiterated only recently that " 'The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it "the duty of the courts to jealously guard this right of the people" [citation], the courts have described the initiative and referendum as articulating "one of the most precious rights of our democratic process" [citation]. "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." [Citations.]' " (Fair Political Practices Com. v. Superior Court (1979) 25 Cal.3d 33, 41.) The United States Supreme Court recognized our commitment

to the initiative and referendum when it declared, "California's entire history demonstrates the repeated use of the referendums to give citizens a voice on questions of public policy. . . . Provisions for referendums demonstrate devotion to democracy, . . ." (James v. Valtierra (1971) 402 U.S. 137, 141.)

There can be no doubt that government regulation designed to preserve the integrity of the initiative and referendum promotes a goal of the highest priority. As will appear, the Berkeley ordinance serves this compelling interest in a manner that does not frustrate another important aim of the electoral process: i.e., that all be given an opportunity to be heard so as to assure the widest dissemination of opinions on important public questions.

A

While the provision of the 1911 amendment for statewide initiatives and referenda has drawn most of the public and judicial attention over the years, that amendment also declared, "The initiative and referendum powers of the people are hereby further reserved to the electors of each county, city and county, city and town of the State to be exercised under such procedure as may be provided by law."[4] The Legislature has fully implemented these pro-

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[4]Former California Constitution, article IV, section 1, paragraph 18. Present article II, section 11, similarly declares, "Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. This section does not affect a city having a charter."

The former section also contained a reference to charter cities similar to that in the present Constitution. However, we interpreted this language to merely give charter cities, like Berkeley, the au-

visions by statutes regulating county, municipal, and district initiative and referendum elections. (Elec. Code, § 3700 et seq.)

The reason for the adoption of the initiative and referendum methods of direct legislation by the people is beyond any doubt: the electorate sought access to and control of a legislative process that it believed could be dominated by special interests. (See Diamond, *California's Political Reform Act: Greater Access to the Initiative Process* (1975) 7 Sw.U.L.Rev. 453, 455-463; U.S.F. Comment, p. 164; Note, *The California Initiative Process: A Suggestion for Reform* (1975) 48 So.Cal.L.Rev. 922, 923-924.) The initiative and referendum gave the electorate an opportunity to exercise the power of direct as distinguished from representative democracy, and it has made frequent use of that power. The ensuing greater popular participation in public affairs has been generally acknowledged as salutary.

It has also been recognized, however, that the initiative and referendum processes can themselves be employed by the special interest groups whose power they were designd to curb. (Diamond, *op. cit. supra,* 7 Sw.U.L.Rev. at pp. 461-463.) Accordingly, the voters used the initiative to regulate those same processes, and to enact other election re-

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thority to increase the powers of referendum and initiative granted by the Constitution, but not to diminish them. (Hopping v. Council of City of Richmond (1915) 170 Cal. 605, 610-611; accord, Crestview Cemetery Assn. v. Dieden (1960) 54 Cal.2d 744, 756; Brown v. Boyd (1939) 33 Cal. App. 2d 416, 420-422; Comment, *The Scope of the Initiative and Referendum in California* (1966) 54 Cal.L. Rev. 1717, 1723, fn. 40.)

forms, by adopting the Political Reform Act of 1974. (Gov. Code, § 81000 et seq.) Later that year, the Legislature enacted sections 22004 and 22808 of the Elections Code, which allow counties and cities to impose limits on contributions to local ballot measure campaigns. As noted above, such restrictions were said to be constitutional in Hardie v. Eu.

While admitting that contribution limitations in candidate elections serve a compelling interest of preventing corruption (Buckley v. Valeo, *supra*), CARC argues that the subsequent decision in *Bellotti* demonstrates that no comparable danger of corruption exists in a ballot measure campaign. As shown below, we conclude that *Bellotti* is distinguishable from the present case and that to allow large contributions to ballot measure campaigns has an equivalent potential to pervert the purpose of the initiative and more generally corrupt the electoral process.

Concededly, initiative and referendum elections do not raise all the same problems as candidate elections, in which large campaign contributions risk creating future "political debts." (*Bellotti*, 435 U.S. at p. 788, fn. 26.) However, the initiative and referendum procedure is nonetheless subject to being perverted by large contributions. Indeed, in their effect upon the *election process*, contributions to candidates and contributions for or against propositions differ very little.

The original proponents of the initiative and referendum sought to give the electorate the ability to govern directly by majority rule: this was to be true democracy as distinguished from representative democracy. Instead, the

domination of these processes by large contributors leaves other citizens with a stilled voice in the very domain of our electoral system set aside for accomplishing the popular will.[8] The finding, all too common in commentaries on the initiative and referendum, that direct legislation is "enormously expensive to produce and is largely a tool of interest groups," appears to have inspired measures like the Berkeley ordinance, which attempt a return to the primary goals of the initiative and referendum. (Crouch et al., Cal. Government and Politics (3d ed. 1964) p. 108.) When large contributors use the power of their purse to overcome the power of reason, they thwart the intended purpose of the initiative or referendum: instead of fostering participation by a greater segment of the electorate, the vision of direct democracy is transformed into a tool of narrow interests. (Nicholson, *Buckley v. Valeo: The Constitutionality of the Federal Election Campaign Act Amendments of 1974*, 1977 Wis.L.Rev. 323, 330.)

The danger lies not only in the frustration of our declared policy of preserving the initiative and referendum system, but in the inevitable effect on the electoral process as a whole. The importance of this process to the conduct and future of our democratic form of government cannot be gainsaid. Indeed, "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." (Reynolds v. Sims

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[8]Thus the Berkeley Election Reform Act begins with the declaration that "Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth . . . ."

(1964, 377 U.S. 533, 555.) "The electoral process is at the very heart of constitutional government; it is to a large degree the ultimate arena in the competitive struggle for ideas." (Rosenthal, *Campaign Financing and the Constitution* (1972) 9 Harv.J.Legis. 359.) And, as the United States Supreme Court said on a closely related matter, "what is involved here is the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process. This case thus raises issues not less than basic to a democratic society." (United States v. Auto Workers (1957) 352 U.S. 567, 570.)

In *Buckley* the court recognized the potential for corruption of the electoral process in a regime of large contributions in candidate elections. (424 U.S. at pp. 26-27.) Here, it is argued that the electoral process is similarly corrupted by such contributions because voters lose confidence in our governmental system if they come to believe that only the power of money makes a difference. In another context we recognized the danger of such a loss of confidence: "One disturbing phenomenon of the current political scene of which we may take judicial notice is an apparent substantial increase in voter apathy. The erosion and decay caused by the acid of indifference, unconcern, and lack of participation, if prolonged, may pose a danger to the democratic institutions, far more subtle and invidious than any other." (Johnson v. Hamilton (1975) 15 Cal. 3d 461, 471.)

Commentators on our political scene have recognized the nexus between voter apathy and large campaign con-

tributions. "The mass of citizens have tended to shun the opportunity to donate to campaign coffers and to participate in other forms of political activity because they felt their limited resources would be outmatched by a small group of rich and influential 'angels'. . . . [This feeling] has also inspired the emergence of a growing sense of estrangement or disaffection from public institutions and leaders." (Berg et al., Corruption in the American Political System (1976) 47-50.) The result of this phenomenon is decidedly negative: "By abandoning the field of battle, the average voter leaves the political wars to be fought by big contributors and powerful interests." (*Id.* at p. 51.)

Another political scientist reviewed the dramatic effect of large contributions on the results of ballot measure votes in Colorado and concluded, "This study did not find Colorado citizens apathetic, cynical, or ignorant towards the initiatives. The majority of people were interested in the issues and did have ideas on them. But on several proposals their ideas tended to reflect the latest polling techniques, campaign strategies and gimmicks of those with the most power and money. The corrosive impact of this unregulated, grossly unequal power perverted the democratic process in a manner for all to see, whether or not the final election results were to one's liking. . . . It seems clear that initiative campaigns can be subject to the same types of influence that exist in other types of electoral politics, although perhaps in different proportions. Because personality issues may be less important, and partisanship is less clear, money may be all the more crucial." (Shockley, The Initiative, Democracy and Money: The Case of Colorado, 1976, printed in Hearings Before

the Subcom. on the Const. of Sen. Com. on Judiciary on S.J. Res. 67, 95th Cong., 1st Sess., at pp. 188-189 (1977).) A student of the California initiative process has also expressed his belief that this form of corruption may be as injurious as a direct bribe of a public official. (Radabaugh, Tendencies of Cal. Direct Legislation (1961), *id.* at p. 279.)

The Berkeley ordinance, on the other hand, seeks to reverse the trend toward loss of confidence in our political system and apathy in elections by assuring the voters that their vote and their participation, whether in the form of money or services, are significant. We conclude that the interests served by the ordinance should be recognized as compelling. Next, we turn to an examination of the countervailing First Amendment rights asserted by CARC.

B

CARC contends that any interest served by section 602 pales in comparison with the infringement of First Amendment rights caused by the ordinance. It further argues, relying on *Bellotti,* that the ordinance actually has a detrimental effect on the initiative process because it prevents the voters from receiving adequate information to enable them to cast an informed vote. We agree, of course, that direct participation of the people through the initiative or referendum "increases the need for ' "the widest possible dissemination of information from diverse and antagonistic sources." ' [Citation.]" (*Bellotti,* 435 U.S. at p. 790, fn. 29); but while the measure at issue in *Bellotti* completely silenced the voice of Massachusetts corporations, the ordinance here has no such purpose or effect.

To the contrary, the Berkeley ordinance allows to all the right to participate in a ballot measure campaign and to join with others in so doing. The statute at issue in *Bellotti* totally prohibited both corporate expenditures and contributions; the Berkeley ordinance places no limit on expenditures, and permits contributions from any source in amounts up to $250. Thus, an individual or business entity that believes its interests are benefited or threatened by a proposed ballot measure remains free to *spend* money in unlimited amounts, by mass advertising or any other method, to inform the public of its reasons why the measure should be adopted or defeated. However, in order to maintain the initiative and referendum processes as a tool of direct democracy for the people, individuals or business entities are prohibited from *contributing* more than a modest sum to a committee formed to support or oppose the measure. In addition, of course, no restriction is placed on the right of individuals or corporate members to volunteer their *services* in a ballot measure campaign.

CARC's assertion that its right to engage in effective political advocacy is affected by a contribution ceiling is answered by the decision in *Buckley*. The high court recognized the constitutional problems that would result if a contribution limit did prevent effective advocacy, but stated: "The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to pro-

mote political expression." (424 U.S. at pp. 21-22.) The court pointed out that only 5.1 percent of the funds raised by 1974 congressional candidates came in amounts greater than the $1,000 ceiling. (*Id.* at p. 21, fn. 23.) Here, Berkeley stresses that only about 17 percent of CARC's funds were raised from persons or entities contributing in excess of the limitation. Further, CARC ended all fundraising almost a month before the election, and presumably could have raised more funds in legal amounts had it continued to solicit contributions.

We conclude that the Berkeley ordinance does not interfere with effective advocacy or dissemination of information by all sides to a ballot measure controversy, but instead is designed to preserve initiative and referendum elections for the salutary purpose for which they were created, and tends to prevent the corruption of the political process that otherwise results.

Similarly, the ordinance does not impermissibly limit associational rights guaranteed by the First Amendment. CARC argues that such rights are violated because those who desire to give more than $250 are required to spend it on their own. This argument too was answered in *Buckley*, when the court observed that contribution ceilings nevertheless leave the contributor "free to become a member of any political association and to assist personally in the association's efforts . . . ." (424 U.S. at p. 22.) Thus under the Berkeley ordinance anyone who wishes to do so may join and work for any committee supporting or opposing a ballot measure. This is the heart of the freedom to associate; no case has held that the right extends so far

as to entitle political contributors to dominate such committees and their campaigns by unconstrained financial pressure.

It could be contended that unlimited expenditures by individuals and corporations can be as sinister as unlimited contributions to committees, and that the activities of committees can be as essential to the political process as those of individuals and corporations. While as a broad proposition that viewpoint may be arguable, it is a value judgment. On such matters we yield to the legislative determination.

The contrary legislative determination here is not without a tenable rationale. Campaign committees are generally shrouded in anonymity, often adopting seductive names promising to save taxes, preserve resources, or prevent crime. While committees must ultimately identify their donors, the campaign propaganda and the identification are not simultaneous: inducements are disseminated and voter impressions are formed substantially before the sources of committee financing are revealed. On the other hand, when political views are expressed directly by individuals and corporations rather than indirectly or covertly through committees, the voters are immediately made aware of the interested parties and can evaluate their motivation.

C

Finally, the ordinance cannot be sustained unless it is necessary to promote a compelling governmental interest and operates by means that are the least restrictive of

First Amendment rights. We hold above that large contributions to a local ballot measure campaign threaten our electoral system and potentially pervert the purpose of initiative procedures; in light of this conclusion, restricting the size of such contributions "focuses precisely on the problem." (*Buckley*, 424 U.S. at p. 28.) We reject, as the *Buckley* court did, the argument that mere disclosure of contributions is sufficient for this purpose. (*Id.* at pp. 27-28.) As with the measure at issue in *Buckley*, the contribution limitation in section 602 does not interfere with other ways of engaging in political activity, but restricts the one means that represents a danger rather than an aid to the electoral process.

We also reject the argument that the ordinance is unduly restrictive because the $250 ceiling is too low. The major proportion of CARC's funds came in amounts under the ceiling; moreover, the few contributions that were larger were considerably above the ceiling, and hence would not have been aided by a modest upward adjustment.[6] The court in *Buckley* refused to invalidate contribution ceilings on this ground absent proof that the difference was so great as to be a matter of kind and not of degree. (424 U.S. at p. 30.) No such proof is presented here. Finally, we point out this is not a statewide initiative but merely a local campaign in a single municipality, and the amount of ceiling must be viewed in that light.

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[6]The record shows that CARC received three contributions of $5,000, one of $2,000, and two of $1,000.

We conclude that the Berkeley ordinance is necessary to the accomplishment of compelling governmental interests, and uses the least restrictive means to achieve those ends. It violates neither the First Amendment nor article I, section 2, of the California Constitution.

The judgment is reversed.

Mosk, J.

We concur:
Bird, C.J.
Tobriner, J.
Newman, J.

Dissenting opinion by Richardson, J.

I respectfully dissent. In my view, the Berkeley ordinance impermissibly suppresses rights of free expression of California citizens. It clearly violates First Amendment principles, both of freedom of speech and association, as repeatedly expressed by the United States Supreme Court. It also contravenes similar guarantees contained in article I, section 2, of the California Constitution.

Provisions of the ordinance have been litigated before. Its section prohibiting any person from making "any contribution to any candidate or committee" was struck down in Pacific Gas & Electric Co. v. City of Berkeley (1976) 60 Cal.App.3d 123. The provision before us prohibits any individual, corporation, or other entity from contributing more than $250 to any campaign in support of, or opposition to, any ballot measure. A citizens' committee organized itself to oppose a rent control ballot measure at the Berkeley general election of April 1977. The committee raised money from interested citizens and groups to assist its campaign, and the majority now authorizes the forfeiture into the Berkeley City Treasury of $18,600 of the committee's donated funds.

The ordinance impairs two constitutional rights of the donors and contributors to the committee. Each is fundamental. Each is constitutionally protected. First, is the citizen's right of free speech and of unrestricted expression. The First Amendment prohibits Congress from "abridging the freedom of speech." A similar guarantee, expressed somewhat differently, appears in article I, section 2, of our state Constitution, and provides that "Every

person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

With specific application to the free speech limitations contained in the ordinance before us, it has been held by the highest authority that campaign restrictions "operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' [Citation.] Although First Amendment protections are not confined to 'the exposition of ideas,' [citation] 'there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . .' [Citation.] This no more than reflects our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,' [citation]." (Buckley v. Valeo (1976) 424 U.S. 1, 14.)

The second right, which is restricted by the Berkeley law, is that of free association. As we observed last year "contribution limitations restrict the contributor's freedom of association, . . ." (Fair Political Practices Com. v. Superior Court (1979) 25 Cal.3d 33, 43.) This associational right has also been repeatedly described by the United

States Supreme Court as a "'basic constitutional freedom,' Kusper v. Pontikes [1973] 414 U.S., at 57, that is 'closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.'" (Buckley v. Valeo, supra, 424 U.S. 1, 25; Shelton v. Tucker (1960) 364 U.S. 479, 486; Bates v. Little Rock (1960) 361 U.S. 516, 522-523.)

The reality of this limitation on a donor's associational rights is immediately disclosed when it is noted that the Berkeley ordinance permits expenditures without limit to influence the results of the election by advertising or other means. John Q. Citizen himself may spend unlimited funds for or against the rent control measure. Yet, if the same citizen exercising a right to associate with others of like mind seeks to give to a comittee which either supports or opposes the same ballot proposition, the *contribution* may not exceed $250. Although the majority approves this result, Justice Rouse speaking for a unanimous Court of Appeal was eminently correct in describing this consequence as "a supreme anomaly" because thereby "a contributor is entitled to less protection when he exercises his First Amendment rights of free speech *and association,* than if he exercised only his right to free speech." One fundamental right receives greater protection than two in combination. Such a result is wholly untenable and cannot be valid constitutional law. "If a person's independent speech cannot be restricted constitutionally, neither can his speech through association." (Note, *The Unconstitutionality of Limitations on Contributions to Political Committees in the 1976 Federal Election Campaign Act Amendments* (1977) 86 Yale L.J. 953, 967.)

When two such fundamental rights of a citizen, free speech and association, are conjoined, any attempted restriction "is subject to the closest scrutiny." (*Buckley*, at p. 25.) We have said that any impairment may be supported only when "the restraints imposed are nonetheless justified as incidental to the promotion of a 'substantial' or 'compelling' governmental interest, unrelated to speech, and unattainable by means less intrusive upon First Amendment rights." (Hardie v. Eu (1976) 18 Cal.3d 371, 377.) In so concluding we have but echoed similar expressions by the high court: Buckley v. Valeo, supra, 424 U.S. 1, 14, 21; N.A.A.C.P. v. Button (1963) 371 U.S. 415, 438.)

More recently, in a case in which the Supreme Court invalidated an outright ban on expenditures or contributions by corporations aimed at influencing the vote on ballot measures, the court emphasized that when restraints on First Amendment rights are at issue " 'The state may prevail only upon showing a subordinating *interest which is compelling*' [citations], 'and the burden is on the government to show the existence of such an interest.' [Citation.] Even then, the State must employ means 'closely drawn to avoid unnecessary abridgment. . . .' [Citations.]" (Italics added, First National Bank of Boston v. Bellotti (1978) 435 U.S. 765, 786.)

What, then, is the compelling interest requiring imposition of a restraint so substantial on two rights so fundamental? The majority identifies it thus: "large contributions to a local ballot measure campaign threaten our electoral system and potentially pervert the purpose of initiative procedures; . . ." (*Ante*, p. ..... [maj. opn., at p.

18].) My colleagues of the majority urge a theory that public confidence in the electoral processes is undermined by permitting unrestricted contributions in ballot measure elections. It is noteworthy that it is not the *fact* of a danger but the *potential* of a danger that alone generates the *compelling* interest found by the majority. It will readily be seen that this wholly untested political hypothesis is not based upon any record but rather upon the opinions and conclusions of "commentators on our political scene," "a political scientist," or a "student of the California initiative process." (*Ante*, p. ..... [maj. opn., at pp. 12-14].) Moreover, the "commentators" and "students" have hardly been unanimous in their support of contribution limitations to ballot measures. (For contrary views, see generally, Note, supra, 86 Yale L.J. 953; Ely, *The Supreme Court, 1977 Term* (1978) 92 Harv. L. Rev. 5, 163; Redish, *Campaign Spending Laws and the First Amendment* (1971) 46 N.Y.U. L.Rev. 900; Clagett & Bolton, *Buckley v. Valeo* (1976) 29 Vand. L.Rev. 1327.)

The majority's conclusion that there is such a "threat" to our electoral system thereby "potentially" inhibiting the initiative process may or may not be correct. There is no record before us and in this connection the procedural posture of the case should be noted. The trial court granted summary judgment in favor of the citizens' committee which attacked the ordinance. Assuming, only for purposes of analysis, that the trial court was improvident in the entry of its summary judgment invalidating the ordinance, it is manifestly unfair for the majority on the other hand to sustain the ordinance without affording the citizens' committee an opportunity to challenge or rebut the opinions

and views of the "commentator," "political scientist," and "student" on which the majority wholly relies. The study of a Colorado ballot measure, or a 16-year-old analysis which concludes that the California initiative and referendum process is "largely a tool of interest groups" would make interesting background material for a political debate. Unquestioned and unverified, however, these opinions do not constitute the hard evidentiary support needed to demonstrate a state's present and *compelling interest* in the suppression of the multiple First Amendment rights of our California citizens. The existence of such a threat and its potential are wholly undocumented. Indeed the only empirical data that appear in the record are studies of spending on statewide initiative campaigns in California during the period 1954-1974. The studies conducted by a Sacramento research organization, reveal that in 28 statewide contests the highest spenders won 14 times and lost 14 times. I must leave to the reader what that arithmetic proves.

The rationale for the ordinance's restrictions, viewed as sufficient by the majority, is the danger of "corruption" of the initiative process through the infusion of unlimited sums of money by "large contributors" (*ante*, p. .... [maj. opn., at p. 11]) favoring or opposing a ballot measure. This, the majority argues, will destroy the electorate's "confidence in our political system." (*ante*, p. .... [maj. opn., at p. 14].) In the absence, however, of some affirmative showing "by record or legislative finding" this precise reasoning, central to the majority opinion, was flatly rejected, as to corporate contributors, by the *Bellotti* court, supra, 435 U.S. 765, at pages 789-790, in these words: "[T]here

has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts or that there has been any threat to the confidence of the citizenry in government." (Pp. 789-790.) Similarly, there has been "no showing" whatever that large contributors, corporate or otherwise, have thwarted or perverted the initiative in California, which at present appears to be alive and well and increasingly used.

The majority further concludes that candidate and ballot measure elections "differ very little" and that, as in candidate elections, large contributions have "equivalent potential to pervert the purpose of the initiative and more generally corrupt the electoral process." (*Ante*, p. .... [maj. opn., at p. 10].) But again, the Supreme Court summarily dismissed this reasoning, noting, "*Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections,* [citation] *simply is not present in a popular vote on a public issue.* To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution 'protects expression which is eloquent no less than that which is unconvincing.' [citation.]" (*Bellotti*, supra at p. 790.) (Italics added.)

The same result was reached July 11, 1980, by a unanimous Fifth Circuit in which it sustained a district court's invalidation of similar statutory limit on contributions to a committee supporting a referendum measure. The Court

of Appeals noted: "When people elect a candidate, they choose someone to whom they can delegate their political decisionmaking. The people's need to prevent large contributors from improperly influencing this representative decisionmaker is critical. In contrast, when people vote on a referendum proposal, they directly decide the pertinent political issue for themselves. Large contributions for publicity by one group or another do not influence the political decisionmakers—in this case, the voters themselves—except in a manner protected by the first amendment." (Let's Help Florida v. McCrary (5th Cir. 1980) .... F. 2d .... (Nos. 78-2497, 79-2091).) For identical views from the Second Circuit, see Schwartz v. Romnes (1974) 495 F.2d 844, 851-853, and from the Ninth Circuit see C & C Plywood Corp. v. Hanson (1978) 583 F.2d 421, 425.

Directly answering and rejecting the majority's assertion that, unless restricted, "the . . . by large contributors leaves other citizens with a stilled voice, . . ." (*ante*, p. .... [maj. opn., at p. 10]) the high tribunal emphasized, ". . . *the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment*, which was designed 'to secure "the widest possible dissemination of information from diverse and antagonistic sources," ' and ' "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." ' New York Times Co. v. Sullivan [(1964) 376 U.S. 254] at 266, 269, quoting Associated Press v. United States, 326 U. S. 1, 20 (1945), and Roth v. United States [1957] 354 U. S., at 484. The First Amendment's protection against governmental abridgment of free ex-

pression cannot properly be made to depend on a person's financial ability to engage in public discussion. [Citation.]" (Buckley v. Valeo, supra, 424 U.S. 1, 48-49, italics added.)

Thus, point by point, I find the majority's rationale wholly inconsistent with and opposed to the First Amendment free speech and associational pronouncements of the United States Supreme Court, which are binding upon us under federal supremacy principles.

Moreover, the majority does not attempt to answer Justice Rouse's perceptive analysis of the meaning of "corruption" within the initiative context: "The term 'corrupt' implies the existence or expectation of a political quid pro quo. In addition, the term 'corruption' subtly conveys the impression that there is a deviation from an objective standard. Such a belief can have no validity. In a democratic system, objective truth is that which the majority subjectively chooses to adopt. Hence it is delusive to maintain that a declaration by the electorate can be 'corrupt.' The price of free speech is that we must put up with opinions which we may deem to be the purest humbug, untainted by any trace of truth . . . . (N.A.A.C.P. v. Button [1963] 371 U.S. 415, 445.)"

Beyond this, however, there is inherent in the majority position an underlying theme that to me is disturbing, namely, that somehow the California electorate needs to be "protected" from free spending "special interests" which will mislead the voters at election time with slanted propaganda, confusing them into making decisions that are unwise for them. This whole approach is very dubious for several reasons.

I note that section 112 of the Berkeley ordinance requires that the city shall publish in Berkeley newspapers, and in such other newspapers as the Berkeley Fair Campaign Practices Commission considers appropriate, a list of all contributors of over $50 to all candidates or committees. These publications shall occur at least twice during the last seven days of the campaign. The sources of initiative financing thus are matters of public record freely available to the electorate before an issues election. (See *C & C Plywood Corp.*, supra, at p. 425.)

The majority, in my opinion, substantially underestimates the sophistication, intelligence and political maturity of the California electorate. It is a reasonable assumption that the average voter understands that the initiatives and referenda, statewide or local, are sponsored and supported by groups or individuals who may have "axes to grind" and who are beneficially interested in the result.

The increasing use of the initiative and referendum and the rising costs of elections, as noted by Justice Rouse, are hard facts of the present political scene. Doubtless $250 does not buy as much free speech today as it did in 1974 when the ordinance was adopted, suggesting the not altogether pleasing prospect that under the majority's rationale a citizen's most fundamental First Amendment rights may expand and contract with the Consumer Price Index.

Regardless of the foregoing, however, I wholly disagree with the premise underlying the majority's assumptions which betrays an over-protective "father knows best" syndrome. I find nothing in either Constitution, federal or

state, or in law or policy which permits a city council to quantify or measure out the amount of information or misinformation which the electorate may receive in a ballot measure campaign. In my view, a city council has no authority to permit $250 worth of free speech and association and then, drawing the line, to confiscate for the city treasury all sums in excess thereof donated either by supporters or opponents who wish to be heard on an initiative measure.

The long arm of government does not belong in this arena where the direct voice of the people is heard through the initiative or referendum. Where the clash of contesting ideas, opinions and arguments in many forms culminates in the ultimate expression of the people's will, through an issues election, let the people be the sole judge. Let them separate for themselves the wheat of truth from the chaff of falsehood. They need no self-appointed protective guardian to measure for them the amount of public issue information, misinformation or argument which is to be available for their consideration. Justice Jackson put it very well in his concurring opinion in Thomas v. Collins (1945) 323 U.S. 516, 545: "The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind. . . . In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us."

The controlling principle is fundamental: "Government is forbidden to assume the task of ultimate judgment, lest the people lose their ability to govern themselves. See

Thornhill v. Alabama, 310 U.S. 88, 95 (1940); Meiklejohn, The First Amendment is an Absolute, 1961 S. Ct. Rev. 245, 263. The First Amendment rejects the 'highly paternalistic' approach of statutes like § 8 which restrict *what* the people may hear. [Citations.]" (*Bellotti*, supra, fn. 31, pp. 791-792, italics added.) In similar fashion, in my view, the First Amendment prohibits adoption of ordinances which restrict *how much* the people may hear on public issues. This is the clear import of the recent First Amendment expressions of the high court. In the words of one interpretive commentator: "The court [in *Bellotti*] properly deemed it safer to entrust the marketplace of ideas to private and diverse individuals and groups than to allow state controls over speakers and messages. The Court's approach is consistent with recent decisions invalidating paternalistic state restrictions on commercial speech. The public can be trusted to evaluate political and commercial messages in light of their sources before making political and consumer decisions." (Ely, supra, 92 Harv. L.Rev. at pp. 168-169.)

There can be no doubt that a rent control measure is a "governmental affair" of broad interest to landlords, tenants and to the public at large. A free flow of information to an electorate which decides this issue is wholly salutary. Public comment and discussion, pro or con, is highly desirable and should be encouraged. Thus, the speech is protected.

Finding it impossible to square either the majority's rationale or its holding with numerous United States Supreme Court decisions, several of them very recent,

which define in broad terms the reach of the First Amendment protections for American citizens, I conclude that the ordinance before us is constitutionally flawed.

Doubtless, the Berkeley City Council in adopting the contribution restrictions of the ordinance was well intentioned. Nonetheless, it was misadvised for it violated the First Amendment in trenching on two fundamental rights of our citizens without any demonstration of the requisite degree of compelling interest. The limitations of the ordinance cannot stand when considered in the light of this overriding pronouncement of the United States Supreme Court in *Bellotti*, supra, at pages 791-792: "[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. But if there be any danger that the people cannot evaluate the information and arguments advanced by appellants, it is a danger contemplated by the framers of the First Amendment." [Fn. omitted.]

I would affirm the judgment.

Richardson, J.

We concur:
Clark, J.
Manuel, J.

Appendix B

In the Court of Appeal of the State of California

First Appellate District

Division Two

1 Civ. 43451
(Super. Ct. No. 493837-0)

Citizens Against Rent Control/Coalition for Fair Housing, et al.,
Plaintiffs and Respondents,

vs.

City of Berkeley, et al.,
Defendants and Appellants.

[Filed Dec. 13, 1979]

Defendants appeal from a summary judgment declaring that section 602 of the Berkeley Election Reform Act of 1974 (Ordinance No. 4700-N.S.) is unconstitutional. That section provides that "no person[1] shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to a measure to exceed two hundred and fifty dollars ($250)."

[1]Section 219 of the act defines "persons" as "an individual proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert."

Plaintiffs in this action are a political committee known as the Citizens Against Rent Control/Coalition for Fair Housing (hereafter CARC) and various contributors thereto. The defendants are the City of Berkeley, the Berkeley City Council, the Berkeley Fair Campaign Practices Commission and the individual members of that commission. Plaintiffs' complaint alleged that they were opposed to Proposition "B," a measure which would impose a system of rent controls in the City of Berkeley and which was on the ballot for a general election to be held on April 19, 1977. It was further alleged that a controversy between the parties had arisen, in that defendants took the position that CARC was prohibited from accepting more than $250 from any single person or entity, whereas plaintiffs were of the opinion that any such restriction would be invalid as an unconstitutional infringement upon plaintiffs' rights of free speech and freedom of association. Plaintiffs sought injunctive relief and a judicial declaration that section 602 of the Berkeley Election Reform Act of 1974 was unconstitutional and void.

Following the issuance of a temporary restraining order and an order to show cause, defendants answered, denying that the ordinance under attack was invalid.

Thereafter, plaintiffs moved for summary judgment, requesting that the court rule that section 602 was unconstitutional on its face. In support of their motion, plaintiffs filed points and authorities and a declaration by the campaign manager of CARC averring that during the period between January 12 and 24, a number of individuals or entities had contributed sums in excess of $250 apiece to

CARC and that the aggregate sum of such contributions was $18,600. Plaintiffs' declaration also stated that, at a meeting held on March 30, 1977, defendant, Berkeley Fair Campaign Practices Commission, voted that CARC's receipt of these contributions violated section 602 and that said commission therefore ordered that CARC forfeit to the City of Berkeley all of said contributions which exceeded the aggregate sum of $250 per contributor.[3]

Defendants filed opposing points and authorities, and also filed a declaration by the secretary of the Berkeley Fair Campaign Practices Commission which confirmed the fact that the commission had, on March 30, 1977, found that CARC was in violation of section 602 and had ordered CARC to deposit the sum of $18,600 in the Berkeley general fund.

On September 29, 1977, summary judgment was entered declaring that section 602 was unconstitutional as violative of plaintiffs' rights under the First Amendment to the United States Constitution and article I, section 2, of the California Constitution. Defendants filed a timely notice of appeal from the judgment.

This case is not the first to challenge a part of the Berkeley Election Reform Act of 1974. In *Pacific Gas & Electric Co. v. City of Berkeley* (1976) 60 Cal.App.3d 123, this court held that a section of the act which prohibited

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[3]Section 604 of the act requires that "any person . . . found guilty of violating the terms of this chapter, . . . shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted . . . to . . . the General Fund of the City."

any person from making a contribution to "'any candidate or committee,'" was invalid as an impermissibly overbroad restriction of the plaintiff's First Amendment right of free speech. We concluded that the unconstitutionality of the provision was established by the recent decisions in *Buckley v. Valeo* (1976) 424 U.S. 1, and *Citizens for Jobs & Energy v. Fair Political Practices Com.* (1976) 16 Cal.3d 671. Although the precise focus of the legal inquiry here differs from that of the *Pacific Gas & Electric Co.* case, there is a substantial similarity of issues and analysis.

The legal principles applicable to this case are clear and well established. The overriding importance of the First Amendment rights of free speech and association require that, on judicial review, any governmental curtailment of these rights be subjected to strict scrutiny. Any such impairment will be sustained only upon a showing that the law is supported by a compelling interest and that this interest is promoted by means which are closely drawn so as to avoid unnecessary interference with protected freedoms. (*Buckley v. Valeo, supra,* 424 U.S. 1, 25; *N.A.A.C.P. v. Button* (1963) 371 U.S. 415, 438; *Hardie v. Eu* (1976) 18 Cal.3d 371, 377.)

On the date when this court decided the *Pacific Gas & Electric Co.* case, *Buckley, Citizens for Jobs & Energy,* and *Schwartz v. Romnes* (2d Cir. 1974) 495 F.2d 844, were the only relevant precedents. Although many jurisdictions had recently enacted laws which placed restrictions on the unlimited ability of citizens to make contributions to candidates, causes and political committees, the constitutionality of these statutes was uncertain. Now there is a considerable body of decisions to which we may look for guidance.

In *Hardie v. Eu, supra,* 18 Cal.3d 371, the California Supreme Court ruled that sections 85200-85202 of the Government Code imposed impermissible restraints upon the First Amendment rights of free speech and association. The statutes which were held unconstitutional prohibited, inter alia, "any 'person' from incurring expenditures 'in furtherance of . . . circulation or qualification of a statewide petition . . .' unless such expenditures are expressly authorized by the 'proponent' " (pp. 374-375), and limited the total expenditures incurred in circulating and qualifying an initiative to 25 cents for each signature needed to qualify the measure.

In *First National Bank of Boston v. Bellotti* (1978) 435 U.S. 765, a Massachusetts law which prohibited corporations from making contributions or expenditures " 'for the purpose of . . . influencing or affecting the vote on any question submitted to the voters . . .' " (p. 768) was held to be an unconstitutional restriction on the plaintiff's First Amendment rights to disseminate information and to participate in the discussion of public issues which affected the plaintiff's business.

In *C & C Plywood Corp. v. Hanson* (9th Cir. 1978) 583 F.2d 421, the question before the court was the constitutionality of a statute which forbade corporations and banks from making contributions to promote or defeat any ballot issue. Under compulsion of *Buckley* and *Bellotti,* the *Hanson* court held the law invalid as an overly broad restriction of a corporation's right to express its views on issues of general public interest as they affected the corporation.

A recent and most relevant precedent for resolution of the case is *Let's Help Florida v. Smathers* (D.C.N.D. Fla. 1978) 453 F.Supp. 1003. At issue in that case was the validity of a Florida statute which placed a $3,000 ceiling on expenditures by any person or committee in support of, or in opposition to, an issue to be voted on in a statewide election. The limitation on expenditures was struck down as constitutionally defective in that it was not supported by a compelling state interest; also, it employed means which were overly broad and unnecessarily impinged upon protected freedoms.

It is important to note that *Hardie, Bellotti, Hanson* and *Smathers* all involved situations where laws were invalidated on behalf of artificial entities which wished to expend money to influence public opinion on a matter of current public interest. In none of these cases were the plaintiffs attempting to advance or oppose the candidacy of persons seeking public office. We think that this distinction is crucial. In *Buckley v. Valeo, supra,* 424 U.S. 1, which is the seminal decision on legislation regulating the electoral process, the United State Supreme Court decided the constitutionality of various provisions of the Federal Election Campaign Act of 1971 (86 Stat. 3), as amended in 1974 (88 Stat. 1263). The court held, inter alia, that a limitation on the contributions an individual or a committee might make to a particular candidate infringed upon First Amendment rights, but that such a limitation was permissible because it was supported by the state's compelling interest in preventing the possibility and appearance of corruption which is implicit in the perception "that large contributions are given to secure a political *quid pro quo*

from current and potential office holders . . . ." (*Buckley v. Valeo, supra,* at p. 26.) However, the *Buckley* court also held that a limitation on expenditures "'relative to a clearly identified candidate'" (p. 39) in excess of $1,000, a limitation on the expenditures from a candidate's personal resources in excess of certain fixed ceilings, and a limitation on aggregate campaign expenditures by candidates, were all unconstitutional restrictions of First Amendment rights which were not justified by such governmental interests as the prevention of corruption or the appearance of corruption, equalization of the relative financial ability of candidates or groups to influence the outcome of elections, or the reduction of the rapidly increasing costs of campaigns. The court concluded that the restrictions within this second category "place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate." (Pp. 58-59.)

For our purposes, the central holding of *Buckley* is its distinction between candidates and issue-oriented committees such as CARC. The only governmental interest which the *Buckley* court viewed as compelling was the potential for corruption implicit in contributions to candidates. Such interest is not present with regard to issue-oriented committees. (*Buckley v. Valeo, supra,* 424 U. S. 1, 45.) This distinction permeates the entire *Buckley* opinion.

Nevertheless, defendants insist that section 602 of the Berkeley Election Reform Act of 1974 is justified by Berkeley's interest in obviating the "*mere appearances* of political corruption . . . ." This contention is patently unfounded.

Such an interest, within the context of participation by issue-oriented committees in the electoral process, cannot be accepted as legitimate, nor is it cognizable as "compelling."

Defendants rely on a statement from *Buckley* to the effect that limitations on contributions to candidates "do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties." (*Buckley v. Valeo, supra,* 424 U.S. 1, 29.) However, defendants take this excerpt out of context. It is found in that section of the opinion where the *Buckley* court held that limitations on contributions to *candidates* were permissible. It has no application to limitations on contributions to issue-oriented committees, since the danger that justifies restrictions in one context is inapplicable in the other.

The implications of defendants' argument have been rejected by the courts. As cogently stated by the United States Court of Appeals, Second Circuit, "Whatever the justification for prohibiting contributions that are prone to create political debts, it largely evaporates when the object of prohibition is not contributions to a candidate or party, but contributions to a public referendum." (*Schwartz v. Romnes, supra,* 495 F.2d 844, 852-853.) A recent expression by the United States Supreme Court is even more emphatic: "Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue." (*First National Bank of*

Boston v. Bellotti, supra, 435 U.S. 765, 790.) These cases conclusively demonstrate that defendants' asserted interest is inadequate to sustain section 602's restraints on constitutionally protected rights.

A more basic, and equally unsupported thesis, is defendants' contention that plaintiffs' First Amendment rights are not infringed upon by section 602. Although it is less than explicitly stated, defendants appear to argue that *Buckley* supports the proposition that limitations on the amount of contributions restrict only the quantum of support for a candidate or issue and do not curtail the quantity or quality of free speech. There are two refutations of this contention.

First, while it is true that *Buckley* does contain statements which create the initial impression that contribution limitations are not objectionable if they fall short of an absolute prohibition, these statements do not appear in a discussion of issue-oriented associations. For example, defendants cite the following passage from *Buckley*:

"By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. . . . A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. While con-

tributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor." (*Buckley v. Valeo, supra,* 424 U.S. 1, 20-21.)

This excerpt will not bear the interpretation which defendants place upon it. The passage is found in a section of the opinion denominated "General Principles"; technically, therefore, it is dicta. Also, the entire tenor of the passage indicates that it was addressed to limitations of contributions to *candidates.* This can be graphically demonstrated by considering the three sentences defendants did not see fit to include: "A contribution serves as a general expression of support for the *candidate* and *his views,* but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's *support for the candidate.*" (P. 21; emphasis added.) The entire passage, read as a whole, indicates that the court's attention was focused upon candidates and the auxiliary committees organized to promote such candidates. It has no direct application to the scope of this case, which is the restriction of contributions to an issue-oriented committee with no connection to a particular candidate. As mentioned previously, this distinction was the central figure of the *Buckley* court's decision, namely, to accord different constitutional status to contributions, de-

pending on the intended recipient and the uses for which such contributions will be employed.

Secondly, the implication in the passage, which defendants appear to embrace, that the quality of a contribution as speech is somehow diffused when given to a committee, is dispelled upon careful analysis of the court's precise language. The court spoke of a contribution as "a general expression of support for the candidate and his views," and characterized a contribution as an "undifferentiated, symbolic act . . . ." (P. 21.) A candidate is likely to have opinions on more than one subject; thus any contribution to him will be "undifferentiated" to the extent that it cannot be allocated for the candidate's use contingent upon his espousal of a particular point of view on a particular issue. Obviously, the situation is entirely different when a contribution is made to an entity dedicated to a single issue. To the extent that a contribution is made to such an issue-oriented body, the situation is not likely to fall within the purview of the *Buckley* court's statement that "the transformation of contributions into political debate involves speech by someone other than the contributor." (P. 21.) There is a tighter nexus between a contributor and a one-issue organization, and a greater likelihood that the contribution will be used as the contributor wishes than is the case with the attenuated relationship between a contributor and a political candidate who is obliged to take a position on more than one issue. "The committee could therefore be viewed as a conduit for the speech of the contributor directed to a single goal." (*Let's Help Florida v. Smathers, supra*, 453 F.Supp. 1003, 1011, fn. 7.)

To accept defendants' position would also penalize the exercise of a collateral First Amendment right. Defendants do not contend that a government may lawfully limit the expenditures of an individual who seeks, by himself, to campaign for or against a particular ballot measure. Yet they would have this court hold that when a contributor joins with others for such purpose, each is then limited to a contribution ceiling of $250. The supreme anomaly is that this would mean that a contributor is entitled to less protection when he exercises his First Amendment rights of free speech *and association*, than if he exercised only his right to free speech. Such a position has been rejected by at least one other court. (*Let's Help Florida v. Smathers, supra*, 453 F.Supp. 1003, 1013-1014.) We conclude that defendants can advance no interest sufficient to justify section 602's restrictions on protected First Amendment liberties. Quite the contrary, their case demonstrates compelling reasons why this type of expression should not be limited.

Two factors need to be considered at this point. The first is the increasing tendency of the California electorate to engage in direct democracy by means of the initiative and referenda process. The second factor, a concomitant of the first, is the skyrocketing costs attending this trend towards greater levels of direct action by citizens. In *Buckley v. Valeo, supra*, 424 U. S. 1, the Supreme Court took note of the effect of measures like section 602 which would seek to limit the basic input of the political process: "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restrict-

ing the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech." (P. 19.)

One of the principal reasons for making a contribution is to persuade. It is true that many people fear that unlimited expenditures by large corporations or by wealthy individuals will not add to the electorate's edification, but will instead inundate the electorate with material which is slanted and misleading. We believe that to accept this premise is to slander the intelligence of the voters. Assuming that the sources of contributions are disclosed, as is required under the Berkeley legislation, a contribution limitation evidences a fundamental distrust of the voters' ability to recognize campaigning by special interest advocates within the context of an issue-oriented election. Such a paternalistic attitude is repugnant to the First Amendment: "[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. But if there be any danger that the people cannot evaluate the information and arguments advanced, . . . it is a danger contemplated by the Framers of the First

Amendment." (*First National Bank of Boston v. Bellotti, supra*, 435 U.S. 765, 791-792.) Furthermore, within the context of issue-oriented committees, the disclosure requirements have been deemed adequate to prevent the appearance of corruption, the only interest advanced by the defendants in support of section 602. (*Buckley v. Valeo, supra*, 424 U.S. 1, 67.)

The concept of corruption in relation to issue-oriented committees deserves treatment. As has been noted, the term "corrupt" implies the existence or expectation of a political *quid pro quo*. In addition, the term "corruption" subtly conveys the impression that there is a deviation from an objective standard. Such a belief can have no validity. In a democratic system, objective "truth" is that which the majority subjectively chooses to adopt. Hence it is delusive to maintain that a declaration by the electorate can be "corrupt." The price of free speech is that we must put up with opinions which we may deem to be the purest humbug, untainted by any trace of truth. The First Amendment does not allow government to deny citizens the right to draw the usual inferences from valueless material, because nothing can be deemed valueless for purposes of the First Amendment, itself a value-free provision whose protection is not dependent upon "the truth, popularity, or social utility of the ideas and beliefs which are offered." (*N.A.A.C.P. v. Button, supra*, 371 U.S. 415, 445.) "The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind. . . . In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for

us." (*Thomas v. Collins* (1945) 323 U.S. 516, 545 (concurring opinion of Jackson, J.).)

If the purpose for the restriction of contributions was an intent to equalize the position of the parties, it cannot be accepted. The concept that government may restrict the speech of some elements in order to enhance the relative voice of others is wholly foreign to the First Amendment. (*Buckley v. Valeo, supra*, 424 U.S. 1, 48-49; *First National Bank of Boston v. Bellotti, supra*, 435 U.S. 765, 790-791.) In such a case, there would be no guarantee that a stifling of one side would produce a corresponding enhancement of the other. Attempts to restrict the public's access to information are disfavored. It is better to secure the widest possible dissemination of information from diverse and antagonistic sources, and to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 266, 269; see also *Mills v. Alabama* (1966) 384 U.S. 214.)

Section 602 is a direct and substantial restriction on plaintiffs' rights of free speech and association. It has employed means which are unnecessarily broad, thereby invading the area of protected freedoms in order to combat a perceived evil which has no legal reality. It has set itself against the First Amendment's basic presupposition "that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." (*United States v. Associated Press* (D.C.S.D.N.Y. 1943) 52 F.Supp. 362, 372.)

Defendants have cited no case where such a limitation on contributions to issue-oriented associations has been upheld, and our research has only confirmed this dearth of authority. We conclude, therefore, that the trial court was correct in holding that section 602 is an unconstitutional abridgement of plaintiffs' rights of free speech and association.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION.

Rouse, J.

We concur:

Taylor, P. J.

Miller, J.

Appendix C

Dobbs & Nielsen
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Attorneys for Plaintiffs

In The Superior Court Of The State Of California
For The County Of Alameda

No. 493837-0

Citizens Against Rent Control/Coalition For Fair Housing, an unincorporated association, Mason McDuffie, a California corporation, Berkeley Board of Realtors, a California non-profit association, Betty Geritz, Muriel Rosenkranz and Eva Floystrup,

Plaintiffs,

vs.

City of Berkeley, California, a municipal corporation; The Berkeley City Council; The Berkeley Fair Campaign Practices Commission; Patricia Devito, Betty Bennett, Merlin Edwards, John Chasen, Thomas Donovan, Faith Otis, Sandy Miller, David B. Rosenthal, as members of the Berkeley Fair Campaign Practices Commission and Does I through XX, inclusive,

Defendants.

[Filed Sep. 27, 1977]

ORDER GRANTING SUMMARY JUDGMENT FOR PLAINTIFFS

Plaintiffs' Motion for an order striking the answer herein and entering judgment for plaintiffs came on regularly for hearing before the Court on August 24, 1977. Dobbs & Nielsen by James R. Parrinello appeared as counsel for plaintiffs and Michael Lawson, the City Attorney of Berkeley, appeared as counsel for defendants. The Court examined the declarations and points and authorities submitted in support of and in opposition to said motion, and the matter was argued and submitted.

The Court being fully advised herein and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs' motion herein be, and hereby it is, granted on the ground that Section 602 of the Berkeley Election Reform Act of 1974, as amended, is unconstitutional and in violation of plaintiffs' rights under the First Amendment to the United States Constitution and Article I, Section 9 of the California Constitution;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the answer herein be, and it is, stricken; that the $2,500 bond previously filed by plaintiffs be exonerated; and that plaintiffs be entitled to costs of suit incurred.

Dated: August 24, 1977 and presented for signature and signed September 27, 1977.

JOHN P. SPARROW
John P. Sparrow, Judge
of the Superior Court

Appendix D

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Attorneys for Plaintiffs

In The Superior Court Of The State of California
For The County Of Alameda

No. 493837-0

Citizens Against Rent Control/Coalition For Fair Housing, an unincorporated association, et al.,

Plaintiffs,

vs.

City of Berkeley, California, a municipal corporation; et al.,

Defendants.

[Filed Sept. 27, 1977]

JUDGMENT

This action came on before the Court on plaintiffs' Motion for Summary Judgment on August 24, 1977. Dobbs & Nielsen by James R. Parrinello appeared as counsel for

plaintiffs and Michael Lawson, the City Attorney of Berkeley, appeared as counsel for defendants. The cause having been argued and submitted, the Court being fully advised in the premises, and the Court having entered its Order granting summary judgment for plaintiffs,

IT IS ORDERED, ADJUDGED AND DECREED that Section 602 of the Berkeley Election Reform Act of 1974, as amended, is unconstitutional and in violation of plaintiffs' rights under the First Amendment to the United States Constitution and Article I, Section 9 of the California Constitution, and that plaintiffs' recover from defendants their costs of suit incurred herein in the sum of $.

Dated: September 27, 1977

JOHN P. SPARROW
John P. Sparrow, Judge
of the Superior Court

Judgment entered on ....., 1977, in Judgment book Volume ....., page .....

Clerk of the Court

By

Deputy Clerk

Appendix E

Superior Court Of The State Of California
In And For The County of Alameda

CLERK'S NOTICE IN RE ENTRY OF JUDGMENT

Action No. 493837-0

Citizens Against Rent Control/Coalition
For Fair Housing, et al.,
Plaintiffs

vs.

City of Berkeley, California, et al.,
Defendant(s)

You are hereby notified that judgment was entered in the above-entitled action on Sept. 29, 1977 in Book 493 at Page 3.

Dated: Oct. 4, 1977

Rene C. Davidson, County Clerk
By: /s/ D. McEachern
Deputy

Appendix F

City of Berkeley

Election Reform Act of 1974
Ordinance No. 4700-N.S.

• • • •

In Effect: June 4, 1974
Revised to: November 2, 1976

Annotation
Regarding
Berkeley Election Reform Act of 1974
Ordinance No. 4700-N.S.

• • • •

Note: Because of recent court decisions affecting election activity, this Ordinance is annotated; such annotations generally provide for the following:

1. Expenditure *limits* for candidates, committees, independent committees and all other individuals are *invalid.*

2. A "contribution" to one's own campaign is an expenditure, thus no limitation applies.

3. Reporting requirements of purely independent expenditures uncoordinated with a particular candidate are *invalid.*

4. Contribution limits on individuals and their committees are *valid.*

5. General provisions for disclosure and reporting are *valid.*

Annotations Revised to: January 21, 1977

TEXT CHANGES

Sections	Action	Initiative Ordinance No.	Effective Date
112	Amended	4946-N.S.	11/2/76
205	Amended	4945-N.S.	11/2/76
206	Amended	4945-N.S.	11/2/76
207	Repealed	4945-N.S.	11/2/76
401 (a)	Amended	4733-N.S.	11/5/74
401 (a)	Amended	4947-N.S.	11/2/76
401 (b)	Amended	4733-N.S.	11/5/74
401 (b)	Amended	4947-N.S.	11/2/76
401 (c)	Amended	4733-N.S.	11/5/74
401 (c)	Amended	4947-N.S.	11/2/76
401 (d)	Amended	4733-N.S.	11/5/74
401 (d)	Amended	4947-N.S.	11/2/76
401 (e)	Amended	4733-N.S.	11/5/74
401 (e)	Added	4947-N.S.	11/2/76
412 (b)	Amended	4948-N.S.	11/2/76
412 (c)	Amended	4948-N.S.	11/2/76
412 (d)	Amended	4948-N.S.	11/2/76
412 (e)	Amended	4948-N.S.	11/2/76
412 (g)	Amended	4948-N.S.	11/2/76
412 (h)	Amended	4948-N.S.	11/2/76
413	Amended	4945-N.S.	11/2/76
420	Amended	4948-N.S.	11/2/76
424	Amended	4948-N.S.	11/2/76
500	Repealed	4945-N.S.	11/2/76
501	Repealed	4945-N.S.	11/2/76
502	Repealed	4945-N.S.	11/2/76
503	Repealed	4945-N.S.	11/2/76
504	Repealed	4945-N.S.	11/2/76
505	Repealed	4945-N.S.	11/2/76
506	Repealed	4945-N.S.	11/2/76
507	Repealed	4945-N.S.	11/2/76
601	Repealed	4945-N.S.	11/2/76
603 (a)	Amended	4948-N.S.	11/2/76
603 (b)	Amended	4948-N.S.	11/2/76
605	Added	4701-N.S.	6/4/74
704	Amended	4948-N.S.	11/2/76

Ordinance No. 4700-N.S.
Berkeley Election Reform Act of 1974

Be It Ordained by the People of the City of Berkeley:

CHAPTER 1. GENERAL

Sec. 100: This ordinance shall be known and may be cited as the Berkeley Election Reform Act of 1974.

Sec. 101. The people find and declare as follows:

(a) Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;

(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

(c) Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from persons and organizations who thereby gain disproportionate influence over governmental decisions;

(d) The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate;

(e) Previous laws regulating campaign practices have suffered from inadequate enforcement.

Sec. 102. The people enact this ordinance to accomplish the following purposes:

(a) Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited;

(b) The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced;

(c) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this ordinance will be vigorously enforced.

Sec. 103. This ordinance should be liberally construed to accomplish its purposes.

Sec. 104. Reports and statements filed under this ordinance shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs or verifies any report or statement required to be filed under this ordinance which contains material which he or she knows to be false is guilty of perjury.

Sec. 105. Reports or statements filed under this ordinance shall be filed with the City Clerk.

Sec. 106. No fee or charge shall be collected by the City Clerk for the filing of any report or statement or for the forms upon which the reports or statements are to be prepared.

Sec. 107. Campaign statements are to be open for public inspection and reproduction during regular City business hours, at the office of the City Clerk and at the Berkeley Public Library during the normal hours it is open to the public. Copies of the statements or parts of statements shall be provided by the City Clerk at a price of not more than ten cents ($0.10) per page copied.

Sec. 108. Every campaign statement shall be preserved by the City Clerk for at least six (6) years from the date upon which it was required to be filed under the terms of this ordinance.

Sec. 109. With respect to reports or statements filed with him or her pursuant to this ordinance, the City Clerk shall:

(a) Supply the necessary forms and manuals prescribed by the Commission;

(b) Notify in advance all candidates and known committees of the dates campaign statements are required;

(c) Report apparent violations of this ordinance to the appropriate agencies; and

(d) Complete and maintain a current list of all reports and statements filed with his or her office.

Sec. 110. Whenever in this ordinance the amount of goods, services, facilities or anything of value other than

money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services or facilities shall be appended to the report or statement.

Sec. 111. If any provision of this ordinance, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this ordinance are severable.

Sec. 112. The City of Berkeley shall publish, in all newspapers whose editorial offices are in Berkeley, which during at least six (6) months of the year generally publish a newspaper at least five days a week and at least two-thirds of whose newspapers are delivered in Berkeley a list of all contributors of over $50 to all candidates or committees under the heading of Public Notice, at least two times in the seven days prior to the election. In addition, the City of Berkeley shall publish a list of all contributions of over $50 to all candidates or committees under the heading Public Notice, at such time or times and in such newspaper or newspapers as the Commission shall find is appropriate to inform minority group members of such contributions. In addition, the City of Berkeley may publish notices in such newspapers or other media as the Commission shall find is appropriate to inform the public.

CHAPTER 2. DEFINITIONS

Sec. 200. Unless the contrary is stated or clearly appears from the context, the definitions set forth in this chapter shall govern the interpretation of this ordinance.

Sec. 201. "Adjusting an amount for cost of living changes" means adjusting upward or downward by the percent change in the Consumer Price Index for the United States, published by the United States Bureau of Labor Statistics using October 1974 as the base month. The Commission shall calculate the adjusted amounts based on the index level of the month six months prior to an election and shall inform all candidates and committees of said figure on the filing date for that election.

Sec. 202. "Campaign statement" means an itemized report which is prepared on a form prescribed by the Commission and which provides the information required by Chapter 4 of this ordinance.

Sec. 203. "Candidate" for the purposes of this ordinance means a candidate for a Berkeley municipal elective office. "Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or makes an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and

whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any office holder who is the subject of a recall election and any candidate for his or her office, but does not include the proponents or opponents of a recall. The proponents or opponents of a recall are for the purposes of this ordinance the proponents or opponents of a measure.

Sec. 204. "Commission" means the Berkeley Fair Campaign Practices Commission.

Sec. 205. "Committee" means any person or combination of persons that directly or indirectly receives contributions which total more than $250 in a calendar year or makes expenditures exceeding more than $250 in a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party.

Sec. 206. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualifications for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund raising events; a candidate's own money or property used

on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this ordinance. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of $50, nor shall it include food and beverages the value of which for any one event is no more than $50.

Sec. 207. Repealed.

Sec. 208. "Cumulative amount" in a campaign statement means the amount contributed or expended since the closing date of the most recent post-election statement which has been filed by the filer. If the filer has not previously filed a campaign statement pursuant to any of these sections, the cumulative amount is the amount contributed or expended since the effective date of this ordinance.

Sec. 209. "Elected officer" means any person who holds an elective office or has been elected to an elective office

but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer.

Sec. 210. "Election" shall mean any primary, general or special municipal election held in the City of Berkeley, including an initiative, referendum or recall election.

Sec. 211. "Elective office" means any elective office as defined in the Berkeley City Charter.

Sec. 212. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.

Sec. 213. "Filer" means any person filing or required to file any statement or report under this ordinance.

Sec. 214. "Independent committee" means a committee which is not controlled either directly or indirectly by a candidate or controlled committee, and which does not act jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates.

Sec. 215. "Late contribution" means any contribution of $100 or more received after the closing date of the last campaign statement required to be filed prior to an election.

Sec. 216. "Mass mailing" means two hundred (200) or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry.

Sec. 217. "Measure" means any City Charter amendment, ordinance or other proposition submitted to a popular vote at an election, whether by initiative, referendum or recall procedure or otherwise, or circulated for the purposes of submission to a popular vote at any election, whether or not the proposition qualifies for the ballot.

Sec. 218. "Period covered" by a statement or report required to be filed by this ordinance means, unless a different period is specified, the period beginning with the day after the closing date of the most recent statement or report in question. If the person filing the statement or report has not previously filed a report or statement of the same type, the period covered begins on the effective date of this ordinance. Nothing herein shall exempt any person from disclosing transactions which occurred prior to the effective date of this ordinance according to the law then in effect.

Sec. 219. "Persons" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company corporation, association, committee, and any other organization or group of persons acting in concert.

CHAPTER 3. BERKELEY FAIR CAMPAIGN PRACTICES COMMISSION

Sec. 300. There is hereby established in Berkeley municipal government the Berkeley Fair Campaign Practices Commission. The Commission shall have nine (9) members, including the chairperson.

Sec. 301. Each member of the Commission shall serve for the same term as the Councilmember appointing them. Members of the Commission may not be reappointed by the same Councilmember. All initial appointments shall be made by September 1, 1974. A member whose term has expired shall serve until his or her successor is appointed.

Sec. 302. A majority of the appointed members shall constitute a quorum.

Sec. 303. The Commission shall elect its own chairperson.

Sec. 304. Vacancies on the Commission shall be filled, within thirty (30) days, by appointment of the same official, or his or her successor, who appointed the prior holder of the position. Appointments to fill vacancies shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to execute all of the powers of the board.

Sec. 305. Each member of the Commission shall be a resident of Berkeley and registered to vote in Berkeley elections. No member of the Commission, during his or her tenure, shall hold or seek election to any other public office, serve as an officer of any political party or partisan organ-

ization or participate in or contribute to a Berkeley municipal election campaign. No member of the Commission shall endorse, support, oppose or work on behalf of or against any candidate or measure in a Berkeley election. Each member of the Commission shall use his or her best efforts to remain independent of candidates and measures in Berkeley elections.

Sec. 306. The Commission shall have a staff which shall act in accordance with Commission policies and regulations and with applicable law to investigate violations and bring proper court action and to assist the Commission in the performance of its duties.

Sec. 307. The Commission has the primary responsibility for the impartial, effective administration of this ordinance.

Sec. 308. The Commission may adopt, amend, and rescind rules and regulations to carry out the purposes of this ordinance, and to govern the procedures of the Commission.

Sec. 309. The Commission shall, in addition to its other duties:

(a) Prescribe forms for reports, statements, notices and other documents required by this ordinance;

(b) Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of this ordinance, and explaining the duties of persons and committees under this ordinance;

(c) Provide assistance to agencies and public officials in administering the provisions of this ordinance;

(d) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this ordinance.

Sec. 310. Any person may request the Commission to issue an opinion with respect to his or her duties under this ordinance. The Commission shall issue the opinion within fourteen (14) days. No person who acts in good faith of an opinion issued to him or her by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The Commission's opinions shall be public records and may from time to time be published. The Commission may request the City Attorney to issue an opinion, in which case the City Attorney shall issue the opinion within fourteen (14) days.

Sec. 311. Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate possible violations of this ordinance. Within seven (7) days after the receipt of a complaint under this section, the Commission shall notify in writing the person who made the complaint of the action, if any, which the Commission has taken or plans to take on the complaint, together with the reasons for such action or non-action.

Sec. 312. When the Commission determines there is probable cause for believing this ordinance has been violated, after making a good faith effort to give at least twenty-four (24) hours notice to the person or persons it has probable cause to believe violated this ordinance, it

may hold a hearing to determine if such a violation has occurred. All interested persons may participate in the hearing pursuant to procedures established by the Commission.

Sec. 313. Any person may seek judicial review of any action of the Commission.

Sec. 314. All meetings of the Commission shall be open to the public.

CHAPTER 4. CAMPAIGN DISCLOSURE

Article 1. Organization of Committees

Sec. 400. (a) Each candidate and each committee shall appoint a campaign treasurer. A candidate may appoint himself or herself as his or her campaign treasurer. No contribution and no expenditures shall be accepted or made by or on behalf of a candidate or committee at a time when there is a vacancy in the office of treasurer.

(b) No expenditure shall be made by or on behalf of a candidate or committee without the authorization of the treasurer or that of his or her designated agent.

(c) All contributions received by a person acting as an agent of a candidate shall be reported promptly by such person to the candidate or any of his or her designated agents. All contributions received by a person acting as an agent of a committee shall be reported promptly by the recipient to the committee's treasurer or any of his or her designated agents. "Promptly" as used in this section means not later than five (5) days before the closing date of any campaign statement required to be filed by the treasurer, and immediately if the contribution was received

less than five (5) days before the closing date. All contributions shall be separated from and may not be comingled with any personal funds of the recipient or any other person.

Sec. 401. (a) A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee in a bank located in Alameda County. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly. Where a candidate or a committee are permitted under Section 414 to file a joint campaign statement, a campaign treasurer may establish and maintain under the terms of this section one joint checking account for the candidate and the committee;

(b) Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars ($50) or more shall be made by a check payable to the person furnishing the goods or services to a candidate or committee;

(c) In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee,

the campaign treasurer shall certify that to his or her knowledge the candidate or committee has no further outstanding indebtedness in connection with the campaign, and shall liquidate the contribution checking account by paying the remaining balance in the checking account to the candidate or committee for his or her or its use in any lawful manner within ninety (90) days after the date of election, unless upon good cause an extension is granted by the Commission;

(d) The campaign treasurer shall make available to the Commission, the City Attorney, the City Clerk, the District Attorney, the California Attorney General and the California Secretary of State, or their designees, on demand, the details of any account requested and the records supporting it. In addition the campaign treasurer shall sign waiver permitting the aforementioned authorities and/or designees to inspect the campaign account records maintained by the bank in which the campaign account is opened, and shall maintain a record of every contribution received and every disbursement made from the account which record shall include copies of cancelled checks, bank records, bills and vouchers. Such records shall be maintained for a period of sixty (60) days from the date of final report;

(e) If, prior to the date of the filing of the final report or during the sixty (60) day period immediately thereafter, the Commission reasonably believes a reporting or disclosure requirement has been violated by a candidate or committee, the Commission shall be empowered to conduct or cause to be conducted an independent audit of the books and records of such candidate or committee. The cost of such audit shall be borne by the Commission. If the Com-

mission determines such audit is appropriate the Commission may order such candidate's or committee's books and records maintained for a period in excess of sixty (60) days or until such time as the audit is complete and the Commission has made its final determination in the matter, which determination shall be in writing. In making its determination the Commission shall afford the candidate or committee a full and complete opportunity to appear and offer evidence and testimony in such candidate's or committee's behalf. Such candidate or committee shall be entitled to a copy (or copies) of any independent audit conducted pursuant to this subsection not less than three (3) days before any Commission consideration thereon.

Sec. 402. Every committee shall file with the City Clerk a statement of organization within ten (10) days after it is formed as a committee. Each such committee in existence at the date of enactment of this ordinance shall file a statement with the City Clerk within thirty (30) days after the effective date of this ordinance.

Sec. 403. The statement of organization required by Section 402 shall include:

(a) The name, street address and telephone number, if any, of the committee;

(b) The name, street address and telephone number of each candidate, if any, with which the committee is affiliated or connected;

(c) The full name, street address and telephone number, if any, of the treasurer and other principal officer;

(d) The full name and office sought by each candidate and the title and ballot number if any, of each measure, which the committee supports or opposes;

(e) A statement of whether the committee is independent or controlled, and if it is controlled, the name of each candidate or committee by which it is controlled or with which it acts jointly;

(f) The disposition of surplus funds which will be made in the event of dissolution;

(g) Such other information as shall be required by the rules or regulations of the Commission consistent with the purposes and provisions of this ordinance.

Sec. 404. Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten (10) days to reflect the change.

Article 2. Filing of Campaign Statements.

Sec. 410. Each candidate and each committee shall file no fewer than two campaign statements prior to an election and one campaign statement following the election. Campaign statements shall be filed in accordance with the filing dates prescribed by state law. If state law is amended to establish fewer than two filing dates prior to an election and one filing date following the election, the Commission shall set the necessary filing dates.

Sec. 411. A candidate shall verify his or her campaign statement and the campaign statement of each committee subject to his or her control. The verification shall be in accordance with the provisions of Section 104 except that it shall state that he or she has made reasonable inquiry

into the truthfulness and completeness of such campaign statements and that to the best of his or her knowledge the treasurer of each controlled committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any committee from the obligation to verify each campaign statement filed pursuant to Section 104.

Sec. 412. Each campaign statement required by this article shall contain the following information:

(a) Under the heading "receipts," the total amount of contributions received, and under the heading "expenditures," the total amount of expenditures made during the period covered by the campaign statement and cumulative amount of such totals.

(b) The total amount of contributions received during the period covered by the campaign statement from persons who have given fifty dollars ($50) or more;

(c) The total amount of contributions received during the period covered by the campaign statement from persons who have given less than fifty dollars ($50);

(d) The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received fifty dollars ($50) or more;

(e) The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received less than fifty dollars ($50);

(f) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(g) The full name of each person from whom a contribution or contributions totalling fifty dollars ($50) or more has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, the amount which he or she contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he or she contributed. In the case of committees which are listed as contributors, the campaign statement shall also contain the full name and street address of the treasurer of the committee. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated in regard to the lender, together with the date and amount of the loan, and if the loan has been repaid, the date of payment and by whom paid;

(h) The full name, street address of each person to whom an expenditure or expenditures totalling fifty dollars ($50) or more has been made, together with the amount of each separate expenditure to each person during the period covered by the campaign statement; a brief description of the consideration for which the expenditure was made; the full name and street address of the person providing the consideration for which an expenditure was made if different

from the payee; and in the case of committees which are listed, the full name and street address of the treasurer of the committee;

(i) In a campaign statement filed by a committee supporting or opposing more than one candidate or measure, the amount of expenditures for or against each candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures for or against each such candidate or measure;

(j) The full name, residential and business address and telephone number of the filer or, in the case of a campaign statement filed by a committee, the name and telephone number of the committee and the committee's street address;

(k) In a campaign statement filed by a candidate, the full name and street address of any committee, of which he or she has knowledge, which has received contributions or made expenditures on behalf of his or her candidacy, along with the full name, street address and telephone number of the treaturer of such committee.

Sec. 413. Whenever any provision of this chapter requires the filing of a campaign statement by a candidate or committee, a statement signed under penalty of perjury may be filed in lieu thereof that to the best of his or her knowledge not more than two hundred dollars ($200) has been received or expended.

Sec. 414. Two or more committees which act jointly in support of or in opposition to any candidate or measure may file consolidated campaign statements under this ordinance.

Sec. 415. Each late contribution shall be reported by the filing with the City Clerk within forty-eight (48) hours of its receipt the full name, street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of the contributor. Filing of a report of late contributions may be by any written means of communication, including but not limited to, telegram or letter, and need not contain an original signature. Late contributions shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

Article 3. Prohibitions.

Sec. 420. All monetary contributions fifty dollars ($50) or more shall be made by written instrument containing the name of the donor and the name of the payee.

Sec. 421. No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes.

Sec. 422. No contribution shall be made, directly or indirectly, of anything belonging to another person or received from another person on the condition that it or part of it be used as a contribution. No contribution shall be made, directly or indirectly, by any person on behalf of another person.

Sec. 423. No expenditure shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section. This section is intended as a limitation and does not authorize any expenditures which are otherwise prohibited by this ordinance.

Sec. 424. No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totalling more than fifty dollars ($50) in a calendar year. An anonymous contribution of more than fifty dollars ($50) shall not be kept by the intended recipient but instead shall be promptly paid to the City Auditor for deposit in the General Fund of the City.

Sec. 425. No person shall make an expenditure for the purpose of sending a mass mailing unless the postage is paid by postage meter or the mail is sent by first class or third class bulk rate mail. The bulk rate number or meter number shall be stated in a campaign statement, and a copy of every mass mailing in support of or in opposition to a candidate or measure shall be sent to the Commission. Such copies sent to the Commission shall be public record.

CHAPTER 5. LIMITATIONS ON EXPENDITURES

Article 1. Candidates. Repealed

Article 2. Measures.

Sec. 510. "Expenditures" as used in this article mean expenditures to influence the "action" of voters for or against the placing of a measure on the ballot or for or against the adoption of any measure which has qualified to be placed on the ballot.

Sec. 511. No committee shall make expenditures with respect to any measure in excess of one hundred dollars ($100) without complying with the requirements of this article. For purposes of this article, two or more committees which act jointly in the receipt or solicitation of contributions or the making of expenditures shall be deemed a single committee.

Sec. 512. Any committee which intends to make expenditures in excess of one hundred dollars ($100) with respect to any measure, shall, not later than twenty-eight (28) days prior to an election, file a statement of intent with the Commission, which shall identify the measure and state whether the committee intends to support or oppose the measure and the amount the committee intends to spend. The Commission shall approve the statement of intent, subject to the limitations set forth in this article, if it finds that the committee has the intention and ability to incur the expenditures. Not less than twenty-one (21) days prior to the election, the Commission shall notify each committee whose statement has been approved of the limitation on expenditures that is applicable to the committee.

Sec. 513. Aggregate expenditures in support of or in opposition to a measure shall not exceed seventy-five hundred dollars ($7500) or ten cents ($0.10) multiplied by the number of registered voters, whichever is less, and adjusted in all years after October 1974 for cost of living changes as defined in Section 201.

Sec. 514. (a) Except as provided in Section 514(b), if the aggregate amount set forth in the approved statements of intent filed in support of or in opposition to a measure exceeds the limitations contained in Section 513, the Commission shall apportion the permissible expenditures among the committees which have filed statements of intent on the basis of a strictly arithmetic formula which shall be prescribed by regulation, unless all the committees agree among themselves to a different allocation, in which case the Commission may apportion pursuant to the agreed-to allocation.

(b) If the measure is placed on the ballot by the circulation of petitions, the electors who signed the notice of intent to circulate the petitions or their delegated representatives shall constitute the official committee and shall be allotted as much as they request, up to eighty percent (80%) of the allowed expenditures in Section 513.

Sec. 515. Expenditures incurred by an ongoing organization, not formed specifically for the purpose of influencing voters, for communication strictly limited to its own members, and not to the general public, shall not be included within the limitations contained in Sections 511, 512 and 513.

Sec. 516. If an expenditure is incurred in support of or in opposition to more than one measure, the entire amount is charged to each measure for the purposes of Section 513.

Sec. 517. No person shall receive any compensation for the circulation of petitions to place a measure on the ballot.

Sec. 518. Positions taken by a candidate on a measure shall not be charged to the committee supporting or opposing the measure if the expenditure is paid for by the candidate or committee supporting the candidate. Such expenditures shall be charged against the candidate's expenditure limit.

CHAPTER 6. LIMITATIONS ON CONTRIBUTIONS

Sec. 600. No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred and fifty dollars ($250).

Sec. 601. Repealed

Sec. 602. No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to a measure to exceed two hundred and fifty dollars ($250).

Sec. 603. (a) The first $1,500 raised in contributions of $50 or less are exempt from disclosure requirements.

Any contributions of $50 or less received after the $1,500 are not subject to the exemption of Section 412 for contributions of less than $50.

(b) In addition to any other limitations, all the committees spending more than $100 in support or opposition to a measure cannot respectively keep or expend for or against in the aggregate more than one thousand dollars ($1,000) ($1,000 for all those supporting and $1,000 for all those opposing the measure) in contributions, except for contributions of fifty dollars ($50) or more and contributions as to which disclosures are made in campaign statements as if such contributions were fifty dollars ($50) or more. If there is more than one such committee opposing or supporting a measure, the Commission shall determine pursuant to its rules what part of said $1,000 each committee can keep and expend and shall inform the committee of the amount at least twenty-one (21) days before the election. Any excess shall be paid promptly to the City Auditor for deposit in the General Fund of the City.

Sec. 604. If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City Auditor for deposit in the General fund of the City.

Sec. 605. No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, or labor union shall make a contribution to any candidate

or committee, directly or indirectly, and no campaign treasurer shall solicit or accept any such contribution.

CHAPTER 7. ENFORCEMENT

Article 1. Penalties.

Sec. 700. Any person who knowingly or willfully violates any provision of this ordinance is guilty of a misdemeanor punishable by a fine for each violation of three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received.

Sec. 701. If a judgment is entered against the defendant or defendants in an action brought under Section 711, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the General Fund of the City. In an action brought by the Commission on the City Attorney, the entire amount recovered shall be paid to the General Fund of the City.

Sec. 702. If after his or her election a candidate receives a final judgment of conviction of a violation of any provision of this ordinance, the office of such candidate shall be forfeited and such office shall become vacant immediately, thereupon or on the date upon which the candidate, if he or she is not an incumbent, would otherwise take office.

Sec. 703. If a candidate receives a final judgment of conviction of a violation of this ordinance at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election.

Sec. 704. No person convicted of a violation of this ordinance shall be a candidate for City elective office for a period of four (4) years from and after the date of his or her conviction. A plea of nolo contendere shall be deemed a conviction for purposes of this section.

Article 2. Enforcement.

Sec. 710. Any person who believes that a violation of any portion of this ordinance has occurred may file a complaint with the Commission. If the Commission determines that there is reason to believe a violation of this ordinance has occurred, it shall make an investigation. If the Commission has reason to believe that a violation of this ordinance has occurred or is about to occur, it may institute action at law or equity to enforce and compel compliance with the provisions of this ordinance.

Sec. 711. Any resident of the City of Berkeley who believes that a violation of this ordinance has occurred or is about to occur, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this ordinance.

Sec. 712. Before instituting an action pursuant to Section 711, a person must file a written request with the Commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The Commission shall respond within seven (7) days after receipt of the request stating whether or not it intends to file the action. If the Commission states that it intends to file the action and files the action within ten (10) days thereafter, no other action may be brought by any person unless the action brought by the

Commission is dismissed without prejudice. If the Commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this ordinance.

This ordinance was approved by the electors of the City of Berkeley at the Special Municipal Election consolidated with the Consolidated Primary Election held in the City of Berkeley on June 4, 1974.

In effect: June 4, 1974

Appendix G

Michael Lawson, City Attorney
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Berkeley, California 94704
Telephone: (415) 644-6380
Attorneys for Defendants

Superior Court Of California
County Of Alameda

No. 493837-0

Citizens Against Rent Control/Coalition For Fair Housing, an unincorporated association, Mason McDuffie, a California Corporation, Berkeley Board of Realtors, a California non-profit association, Betty Geritz, Muriel Rosenkranz and Eva Floystrup,

Plaintiffs,

vs.

City of Berkeley, California, a municipal corporation; The Berkeley City Council; The Berkeley Fair Campaign Practices Commission; Patricia Devito, Betty Bennett, Merlin Edwards, John Chasen, Thomas Donovan, Faith Otis, Sandy Miller, David B. Rosenthal, as members of the Berkeley Fair Campaign Practices Commission and Does I through XX, inclusive,

Defendants.

DECLARATION OF EDYTHE CAMPBELL

I, Edythe Campbell, first being duly sworn, declare as follows:

I am the duly appointed City Clerk of the City of Berkeley and in that capacity I am responsible for the orderly administration of municipal elections in the City of Berkeley, including the General Municipal Election to be held April 19, 1977.

I am also Secretary to the Berkeley Fair Campaign Practices Commission. This Commission was created by the "Berkeley Election Reform Act of 1974 (Ordinance 4700-N.S.)" and its general purpose is to administer the reporting, disclosure and regulatory provisions of the Act.

In January, 1975, I was advised by the then City Attorney, Donald P. McCullum, that Section 605 of the Act was invalid as a result of a decision of Judge Gordon Minder of the Alameda County Superior Court. I was informed by the City Attorney that this decision was a result of a lawsuit brought by Pacific Gas and Electric Company (PG&E) seeking to invalidate that Section of the Act which limited both campaign expenditures and campaign contributions by corporations with respect to municipal ballot measures.

As a result of this information from the City Attorney I annotated Section 605 of the Act by placing in the margin of all copies of the Act the following words:

"Invalid; do not enforce."

In January, 1976, I was advised by the then acting City Attorney, Lois L. Johnson, that certain additional sections of the Act were invalid, including Section 602, as a

result of the final judgment entered in *PG&E v. City of Berkeley,* Section 602 of the Act was then annotated to read:

"Do not enforce."

In March, 1976, the then acting City Attorney, Lois L. Johnson, advised me that certain additional provisions of the Act were invalid as a result of the U.S. Supreme Court's decision in *Buckley v. Valeo,* a decision involving the review of federal election campaign laws.

Based upon her interpretation of the *Buckley v. Valeo* case, the acting City Attorney advised me that additional annotations should be placed in the margin of the Act indicating such sections as being invalid.

Although the *Buckley v. Valeo* case did not consider directly the Berkeley ordinance the acting City Attorney felt the principles established by the U.S. Supreme Court were sufficiently applicable to the Berkeley law as to require general adherence to the *Buckley v. Valeo* judicial findings.

In July, 1976, the California Court of Appeal affirmed the earlier decision of Judge Gordon Minder. The Court of Appeal held Section 605 invalid as an unwarranted intrusion of First Amendment safeguards as to corporations.

Based upon this appellate decision, the City Attorney, Michael Lawson, on August 25, 1976, reiterated the advice I had received from the previous City Attorney that Section 605 was invalid and should not be enforced. Consequently I amended the annotation on Section 605 to refer to the decision of the appellate court.

In December, 1976, I received an inquiry from Peter Bagatelos, an attorney, regarding the status of Section 602 of the Act since this section was annotated "do not enforce." Since this annotation was placed in the margin on the advice of a previous City Attorney, I inquired of Mr. Lawson (present City Attorney) whether the annotation was still applicable.

Mr. Lawson advised me on or about December 30, 1976, that he would review the entire ordinance and all annotations placed thereon to date and advise declarant and the Commission as to the validity of Section 602 as well as all other sections of the Act which had been annotated.

On January 12, 1977, at a regular Commission meeting, Mr. Lawson advised declarant and the Commission in writing that in his opinion Section 602 was valid and enforceable, based upon his reading of *Buckley v. Valeo*. Mr. Lawson further stated that campaign committees which relied upon the published Act carrying the annotation "do not enforce" adjacent to Section 602 should not be penalized for having accepted contributions in excess of $250.

On January 24, 1977, the City Attorney provided my office with a newly-annotated Act which was published by my office that day. This version of the Act did not carry a marginal annotation adjacent to Section 602.

Between January 13, 1977, and January 21, 1977, the Committee Against Rent Control (CARC) collected $20,-850, $18,600 of which consisted of contributions, in the aggregate, exceeding $250.

On March 30, 1977, as a result of charges made against CARC, the Commission found CARC had violated Section 602 of the Act between January 13, 1977 to January 21, 1977, by accepting the aggregate sum of $18,600 over $250.

The Commission ordered CARC, pursuant to Section 604, to pay the $18,600 to the City Auditor for deposit into the General Fund.

In making its March 30 order the Commission felt CARC knew as of January 12 that Section 602 would be enforced and that notwithstanding such knowledge CARC accepted contributions in excess of $250 for an eight-day period.

I swear the foregoing is true and correct.

Executed this 11th day of April, 1977, at Berkeley, California.

/s/ EDYTHE CAMPBELL
Edythe Campbell

Appendix H

Let's Help Florida, a Political Committee, and
Paul M. Bruun,
Plaintiffs-Appellees,

vs.

Jesse M. McCrary, Jr., as Secretary of State of Florida,
et al.,
Defendants-Appellants.

Dade Voters For a Free Choice, a Political Committee, and
the Florida Restaurant Association, Inc.,
Plaintiffs-Appellees,

vs.

George Firestone, Secretary of State of Florida, et al.,
Defendants-Appellants.

Nos. 78-2497, 79-2091.

United States Court of Appeals,
Fifth Circuit.

July 11, 1980.

Appeals from the United States District Court for the Northern District of Florida.

Before Thornberry, Frank M. Johnson, Jr. and Henderson, Circuit Judges.

Thornberry, Circuit Judge:

In these consolidated cases we must decide whether Florida statutes that restrict the size of contributions to a single political committee in a referendum election violate the first amendment rights of persons who want to contribute more than the maximum amount allowed by the statutes. Because campaign contributions implicate important first amendment rights and because Florida has shown no sufficiently important interest to justify restricting the contributions in a referendum election, we affirm the district court decisions declaring these statutory restrictions unconstitutional.

I. FACTS.

Let's Help Florida is a political committee organized and registered under Florida law for the express purpose of conducting "a public education campaign urging the passage of a constitutional amendment which will legalize casino gambling in Southern Florida." The committee waged a petition drive under the initiative provisions of the Florida constitution in an effort to place the casino gambling proposal on the ballot in the November 1978 election. The committee does not support any individual candidate.

The Florida legislature enacted a comprehensive election code effective January 1, 1978. Section 106.08(1)(d) of the code restricts the size of contributions to a single political committee like Let's Help Florida:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:
>
> . . . . .

(d) To any political committee in support of, or in opposition to, an issue to be voted on in a statewide election, $3,000.

The election code does not restrict the number of contributions a person can make to different political committees, nor does the code restrict the total amount of independent direct expenditures that a person can make without control by, coordination with, or consultation with any candidate, committee, or agent thereof. Fla.Stat.Ann. § 106.011(5) (West. Supp.1980). Political committees must disclose a variety of information upon registration. Fla.Stat.Ann. § 106.03 (West. Supp.1980). Committees must also disclose information about all contributors, even those who make very small contributions. Fla.Stat.Ann. § 106.07 (West. Supp.1980). Various civil and criminal penalties apply for violations of the election code.

In February 1978 Let's Help Florida and a person desiring to contribute more than the statutory maximum amount filed suit against the secretary of state, attorney general, director of the division of elections, and the members of the state elections commission to invalidate section 106.08 (1)(d) under the first and fourteenth amendments. In May 1978 the district court issued a decision invalidating the statute on constitutional grounds.

Dade Voters for a Free Choice is a political committee organized and registered under Florida law to oppose passage of an ordinance that would prohibit smoking in public places; the voters considered this proposal in a county-wide referendum election in May 1979. The committee does not support any individual candidate. Contributions to the Dade Voters committee were restricted to one thousand

dollars by Fla.Stat.Ann. § 106.08(1)(e) (West Supp.1980), which applies to countywide elections in the same way that section 106.08(1)(d) applies to statewide elections.

In February 1979 Dade Voters and a party desiring to contribute more than the statutory maximum amount sued the secretary of state, director of the division of elections, and members of the elections commission to invalidate section 106.08(1)(e) under the first and fourteenth amendments. In March 1979 the district court relied upon its earlier decision in the *Let's Help Florida* case to strike down the statute.

II. FEDERAL JURISDICTION AND REVIEW.

Appellants in the *Dade Voters* case raise several contentions questioning federal jurisdiction and review. Appellants first contend that the district court lacked jurisdiction because no case or controversy existed between the parties. The Supreme Court summarized the test to determine whether a case or controversy exists with regard to first amendment rights in *Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 99 S.Ct. 2301, 2309, 60 L.Ed. 2d 895 (1979):

> When the plaintiff has alleged an intention to engage in a course of conduct, arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Doe v. Bolton*, 410 U.S. 179, 188, 93 S.Ct. 739, 745, 35 L.Ed.2d 201 (1973).

In *Babbitt* the Supreme Court allowed a union to challenge the constitutionality of a state statue regulating election procedures, consumer publicity, and criminal sanctions, even though no elections or prosecutions had yet occurred. The Court said that

> . . . when fear of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative a plaintiff need not "first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute." *Steffel v. Thompson,* 415 U.S. 452 at 459, 94 S.Ct. 1209 at 1216, 39 L.Ed.2d 505.
>
> . . . Moreover, the State has not disavowed any intention of invoking the criminal penalty provision against unions that commit unfair labor practices. Appellees are thus not without some reason in fearing prosecution . . .

99 S.Ct. at 2310-11. The Dade Voters committee wanted to receive larger contributions than the statute allowed. The committee had already received a few contributions larger than the statutory maximum, and other potential donors, including the co-plaintiff in this case, indicated that they would make larger contributions if the law allowed them to do so. The defendants have the statutory duty to enforce the election code. Fla.Stat.Ann. § 106.22-106.27 (West Supp. 1980). They have not disavowed any intention to enforce the statute. On the contrary, counsel for the defendants said that the state would be compelled to begin proceedings against the plaintiffs if the statute is upheld. Record, Vol. III, at 41-42. These facts show that the plaintiff's fear of prosecution is not imaginary or wholly

speculative, and that a sufficient case or controversy exists to establish federal jurisdiction under *Babbitt*, and under Fifth Circuit cases such as *International Society for Krishna Consciousness v. Eaves*, 601 F.2d 809, 817-19 (5th Cir. 1979) and *Septum, Inc. v. Keller*, 614 F.2d 456, 459 (5th Cir. 1980). This conclusion is not contrary to the Second Circuit opinion in *St. Martin's Press, Inc. v. Carey*, 605 F.2d 41 (2d Cir. 1979). In *St. Martin's Press* the court held that no case or controversy existed when a publisher brought a first amendment challenge to enjoin state prosecutors from enforcing a child pornography statute against a book that was outside the scope of the statute, and against which the prosecutors declared they would not enforce the statute. 605 F.2d at 44-45. In contrast to St. Martin's Press, plaintiffs in this case desire to engage in conduct that is in clear violation of a statute which the state has indicated it will enforce against them.

Appellants also contend that the district court should have abstained from hearing this case under principles announced in *Younger v. Harris*. 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). *Younger* abstention principles are inapplicable to this case, however, because no state prosecution was pending when the plaintiffs filed suit. *Steffel v. Thompson*, 415 U.S. 452, 475, 94 S.Ct. 1209, 1223, 39 L.Ed.2d 505 (1974).

Appellants finally contend that the district court should not have issued injunctive relief. A federal court may enjoin state officials from enforcing an unconstitutional statute. *Ex parte Young*, 209 U.S. 123, 165-68, 28 S.Ct. 441, 456-457, 52 L.Ed. 714 (1908). An injunction is proper in

this case because no legal remedy could correct the irreparable injury to plaintiffs' first amendment rights, important for an election only weeks away. See *Elrod v. Burns*, 427 U.S. 347, 373-74 & n. 29, 96 S.Ct. 2673, 2689-2690, 49 L.Ed.2d 547 (1976) (loss of first amendment rights unquestionably constitutes irreparable injury).

III. FIRST AMENDMENT

The right to make political contributions is protected under the first amendment as an important freedom of association. *Buckley v. Valeo*, 424 U.S. 1, 25, 96 S.Ct. 612, 637, 46 L.Ed.2d 659 (1976). In *Buckley* the Supreme Court struck down federal restrictions upon direct political expentures in candidacy elections, but upheld similar restrictions upon contributions to a candidate or to a committee supporting a candidate. As a general preface to its decision, the Court explained that contributions required less first amendment protection than did direct expenditures:

> A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for its permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.
>
> . . . . . .
>
> The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend

> such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression.

424 U.S. at 21-22, 96 S.Ct. at 636.

Even though contributions receive less first amendment protection than do direct expenditures, a state may restrict political contributions only if the state "demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." 424 U.S. at 25, 96 S.Ct. at 638. The sole governmental interest that the Supreme Court recognized as a justification for restricting contributions was the prevention of quid pro quo corruption between a contributor and a candidate. 424 U.S. at 26-29, 96 S.Ct. at 638-640. The governmental interest in restricting contributions to candidates is substantial because actual corruption resulting from a candidate's dependence upon large individual contributors would undermine the integrity of representative democracy, and even the appearance of corruption that arises from public awareness of the possibilities for abuse would erode confidence in the democratic system. *Id.*

The state's interest in preventing the actual or apparent corruption of candidates, which the Supreme Court found so compelling in *Buckley*, does not justify restrictions upon political contributions in referendum elections. When people elect a candidate, they choose someone to whom they can delegate their political decisionmaking. The people's need to prevent large contributors from improperly influencing this representative decisionmaker is critical. In contrast, when people vote on a referendum proposal, they directly

decide the pertinent political issue for themselves. Large contributions for publicity by one group or another do not influence the political decisionmakers—in this case, the voters themselves—except in a manner protected by the first amendment. The distinction between the state's interest in regulating a candidacy election and in regulating a referendum election was discussed by the Supreme Court in *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1976). In striking down a Massachusetts statute that prohibited a corporation from making expenditures or contributions for publicity in a referendum election unrelated to the corporation's immediate business, the Court observed that

> Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution "protects expression which is eloquent no less than that which is unconvincing." . . . We noted only recently that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . ."

435 U.S. at 790, 98 S.Ct. at 1423 (footnotes and citations omitted). This distinction between candidacy and referendum elections has been recognized by several other courts in striking down state restrictions upon contributions for

referendum elections. *See C & C Plywood Corporation v. Hanson,* 583 F.2d 421, 424-25 (9th Cir. 1978) (invalidating Montana law that prohibited corporations from making contributions in a referendum election); *Citizens Against Rent Control v. City of Berkeley,* 99 Cal.App.3d 736, 160 Cal.Rptr. 448, 451-55 (Ct.App., 1st Dist. 1979) (invalidating city ordinance that restricted the size of contributions in a referendum election); *Schwartz v. Romnes,* 495 F.2d 844, 852-53 (2d Cir. 1974) (New York statute prohibiting corporate expenditures for political purposes must be construed narrowly under first amendment so that corporations may make contributions in referendum elections). With regard to referendum elections, appellants cannot justify the statutory restrictions upon political contributions as a means for preventing corruption.

Appellants also contend that the restrictions upon the size of contributions to a single committee are necessary to promote adequate disclosure about who is financing a campaign. In the absence of these restrictions, appellants contend that corporations and wealthy individuals would mask their participation in a referendum campaign by funneling large sums of money into a committee which the public would see only under an innocuous title such as "Let's Help Florida" or "Dade Voters for a Free Choice." Although promoting disclosure of campaign contributors is an important state interest, the restrictions upon political contributions in sections 106.08(1)(d), (e) cannot be justified as disclosure measures because the statutes are not closely drawn to avoid unnecessary abridgment of associational freedoms. These statutes that restrict the amount a person may contribute to a single committee do

little to promote disclosure. The primary effect of the statutes is to compel large contributors who support or oppose a referendum issue to form multiple partisan committees, each of which can receive the maximum amount from a single contributor under the statute. These multiple committees provide no additional disclosure; the public still sees only the innocuous names of the different committees, and not the identities of the underlying contributors.

Florida can and does effectively promote the disclosure of large contributors through measures that are less harmful to first amendment rights. For example, sections 106.03 and 106.07 of the Florida Election Code require political committees to register with the state and to file information about each contribution and contributor throughout the campaign. This information is available to the public and may be published through newspapers and other media. Section 106.143 requires disclosure of the source of payment for all political advertisements and campaign literature. Measures such as these provide adequate disclosure without directly restricting contributions or other important first amendment rights. *See C & C Plywood,* 583 F.2d at 425 (rejecting argument that state interest in promoting disclosure justifies prohibition of corporate contributions in a referendum election).

Because the Florida statutes that restrict the size of contributions in a referendum election abridge important first amendment rights and are ill-suited for preventing corruption or for promoting disclosure, we affirm the decision in the court below.

AFFIRMED.

Appendix I

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Supreme Court of California
No. S.F. 24121

Citizens Against Rent Control/Coalition For Fair Housing, an unincorporated association; Mason-McDuffie, a California corporation; Berkeley Board of Realtors, a California non-profit association; Betty Geritz; Muriel Rosenkranz and Eva Floystrup,

Plaintiffs and Appellants,

vs.

City of Berkeley, California, a municipal corporation; The Berkeley City Council; The Berkeley Fair Campaign Practices Commission; Patricia Devito, Betty Bennett, Merlin Edwards, John Chasen, Thomas Donovan, Faith Otis, Sandy Miller, David B. Rosenthal, as members of the Berkeley Fair Campaign Practices Commission,

Defendants and Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Citizens against Rent Control/Coalition for Fair Housing, an unincorporated association; Mason-McDuffie, a California corporation; Berkeley Board of Realtors, a California nonprofit association; Betty Geritz; Muriel Rosenkranz and Eva Floystrup, the plaintiffs and appellants herein, hereby appeal to the Supreme Court of the United States from the final judgment of this Court entered on August 7, 1980.

This appeal is taken pursuant to section 1257(2) of Title 28 of the United States Code.

Dated: October 28, 1980.

Dobbs & Nielsen
Vigo G. Nielsen, Jr., Esq.
James R. Parrinello, Esq.
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By s/s JAMES R. PARRINELLO
Attorneys for Plaintiffs and Appellants